Articles

Hal Abramson, Bennett Picker, Bill Marsh, Birgit Sambeth Glasner, & Jerry Weiss, *Are Legal Disputes Just About the Money? Answers from Mediators on the Front Line*, 19 CARDOZO J. CONFLICT RESOL. 1 (2017).

This article includes the insights from four full-time mediators, all of whom present different opportunities in mediation that go beyond financial demands. It also presents tips on how to generate mutually agreeable terms that do not necessarily have financial overtones. The four contributors also discuss various skill-sets for mediators that lead to successful mediations.

{21} MEDIATION — GENERAL
{73} SUBJ MATTER: GENERAL
{138} ETHICS: GENERAL

Shahla F. Ali & Odysseas G. Repousis, *Investor-State Mediation and the Rise of Transparency in International Investment Law: Opportunity or Threat?*, 45 DENV. J. INT'L L. & POL'Y 225 (2017).

As part of a greater discussion of investor-state mediation, this article examines three channels to determine its value. First, it discusses the role of negotiation and pre-arbitration consultations in international investment law. Second, it speaks to the history, development and evolution of investor-state mediation as a distinct pre-arbitration dispute resolution procedure. Third, it discusses the benefits and drawbacks of transparency in investor-state arbitration.

{44} ARBITRATION — GENERAL
{92} SUBJ MATTER: INT'L
{146} ORGANIZATIONAL POLICIES & RULES

Cynthia Alkon, *Hard Bargaining in Plea Bargaining: When do Prosecutors Cross the Line*, 17 NEV. L.J. 401 (2017).

This article argues that the U.S. Supreme Court should limit prosecutorial hard bargaining tactics in plea negotiations to protect a

defendant's right to counsel. The author claims that the 2012 U.S. Supreme Court Case *Lafler v. Cooper* demands that the Court restrict prosecutorial hard bargaining behavior. This sort of behavior interferes with defense lawyers' ability to do their jobs and thereby deprives defendants of their bargaining power. This article continues by suggesting that allowing unrestricted prosecutorial hard bargaining undermines the representation of counsel which prevents effective assistance of counsel in plea bargaining.

{1} NEGOTIATION — GENERAL
{82} SUBJ MATTER: CRIMINAL
{149} QUALITY CONTROL
{151} ROLE OF LAWYERS

Rafael Cox Alomar, *Investment Treaty Arbitration in Cuba*, 48 U. MIAMI INTER-AM. L. REV. 1 (2017).

Alomar analyzes Cuba's legal structure's ability to garner direct foreign investment. He discusses interactions between Cuba's dispute settlement mechanisms, including Cuban law, public international law, and investment treaty arbitral jurisprudence, highlighting challenges confronting Cuba's investment treaty landscape. Cuba demonstrates pro-international arbitration policy by ratifying international conventions and signing bilateral investment treaties. But the country minimally engages in arbitrations, and uncertainty remains about Cuba's domestic law and its interactions with the international legal order.

{44} ARBITRATION — GENERAL
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL

Wolfgang Alschner, *The Impact of Investment Arbitration on Investment Treaty Design: Myth Versus Reality*, 42 YALE J. INT'L L. 1 (2017).

This article analyzes the impact of international investment arbitration, particularly investor-state arbitration, has on rulemaking in

international investment agreements. The author focuses on how the presence or absence of an arbitration clause reveal about the investor's confidence in the treaty, as well as how investor-state arbitration affects how a state negotiates future treaties? Finally, the article explores how a state's case law as it pertains to investor-state arbitration impacts the structure of future treaties.

{44} ARBITRATION — GENERAL
{92} SUBJ MATTER: INT'L
{144} LEGISLATION

Lisa Blomgren Amsler, *Dispute System Design and the Global Pound Conference*, 18 CARDOZO J. CONFLICT RESOL. 621 (2017).

This work uses data from the Global Pound Conference (GPC) to assess access to justice and quality of alternative dispute resolution infrastructure around the world. The data specifically addresses each country within the GPC's Dispute System Designs (DSD). The piece argues that nations within the GPC should use GPC data and input their DSD information so the other countries are able use that information to make their ADR practices more effective.

{60} ADR — GENERAL
{92} SUBJ MATTER: INT'L
{149} QUALITY CONTROL

Lisa Blomgren Amsler, Alexander Avtgis, and M. Scott Jackman, *Dispute System Design and Bias in Dispute Resolution*, 70 SMU L. REV. 913 (2017).

This article examines the role of the mediator's race and gender in perceptions of procedural justice as measure of accountability and representative bureaucracy. The mediators in the study work in a national mediation program addressing complaints of employment discrimination at a large federal organization, the United States Postal Service. Here, mediation represents a forum of accountability in which employees may hold their employer accountable for violating federal law prohibiting discrimination in their shared workplace.

{21} MEDIATION — GENERAL
{94} SUBJ MATTER: LABOR — DISCRIMINATION
{149} QUALITY CONTROL

Gilat Bachar & Deborah Hensler, *Does Alternative Dispute Resolution Facilitate Prejudice and Bias? We Still Don't Know,* 70 SMU L. REV. 817 (2017).

The authors identified thirty-eight efforts to empirically test the hypothesis that mediation and arbitration create systematic differences in dispute resolution outcomes by the participant's gender, race, ethnicity or socio-economic status. Using a variety of methods, including laboratory and field experiments, surveys, and analyses of reported outcomes, the authors produced contrary and ultimately inconclusive results.

{60} ADR — GENERAL
{102} SUBJ MATTER: PUBLIC POLICY
{149} QUALITY CONTROL

Rishi Batra, *Improving the Uniform Partition of Heirs Property Act*, 24 GEO. MASON L. REV. 743 (2017).

This article discusses the recent Uniform Partition of Heirs Property Act and proposes additional reforms. The author proposes the adoption of a mandatory mediation provision to resolve disputes under the Act. Because partition actions are emotional disputes, mediation would enhance trust and understanding, leading to better outcomes for all parties.

{21} MEDIATION — GENERAL
{101} SUBJ MATTER: PROBATE
{127} REQUIREMENTS: MANDATE TO USE

Anna Beckers, *Legalization Under the Premises of Globalization: Why and Where to Enforce Corporate Social Responsibility Codes*, 24 IND. J. GLOBAL LEGAL STUD. 15 (2017).

This article argues that global self-regulation through corporate social responsibility codes should be enforced under private domestic laws. The author asserts that such corporate social responsibility codes can be enforced through domestic courts, similar to having international arbitral tribunals enforce the role of arbiters in domestic courts.

{44} ARBITRATION — GENERAL
{92} SUBJ MATTER: INT'L
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Sarah Ben-Moussa, *A Tale of Two Trade Powers: Balancing Investor-State Dispute Settlement and Environmental Risk Between the EU and US in a Changing Political Climate*, 29 FORDHAM ENVTL. L. REV. 95 (2017)

This article examines the benefits and drawbacks of countries of using investor-state dispute settlement (ISDS). ISDS is a system where an individual company may sue a country for discriminatory practices in an arbitration setting rather than in the respective country's court system. The author acknowledges that there must be a balance between both environmental and efficiency interests of the contracting countries so that it can be a long-term solution.

{44} ARBITRATION — GENERAL
{81} SUBJ MATTER: CORPORATE
{84} SUBJ MATTER: ENVIRONMENT
{124} COMPARISONS: CROSS-CULTURAL

Klaus Peter Berger & J. Ole Jensen, *The Arbitrator's Mandate to Facilitate Settlement*, 40 FORDHAM INT'L L.J. 887 (2017).

This article joins the debate about international arbitrators' roles in facilitating settlement between parties. Justified by the quest for increased efficiency in the arbitral process, the authors argue international arbitrators should not view settlement facilitation as incompatible with their mandates. Instead, facilitating settlement is a

tool to resolve disputes in a time and cost-efficient way. The authors provide ways for practicing international arbitrators to help facilitate settlements within their mandates.

{44] ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L
{123} SETTLEMENT: PRESSURES TO SETTLE

H. Allen Blair, *Promise and Peril: Doctrinally Permissible Options for Calibrating Procedure Through Contract*, 95 NEB. L. REV. 787 (2017).

This article analyzes the potential efficiency gains for parties from private procedural ordering like arbitration. Secondly, it presents the existing empirical evidence regarding the degree to which parties seem to engage in procedural contracting. Finally, this article argues that procedural contracting might replace arbitration proceedings in the near future.

{44} ARBITRATION — GENERAL
{75} SUBJ MATTER: COMMERCIAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Juliana Bleiberg, *Activist Investors and Mediation*, 18 CARDOZO J. CONFLICT RESOL. 857 (2017).

This article highlights the problem between activist investors and their aggressive use of proxy battles. Not only are these battles expensive and contentious, they are also open to the public and potentially damaging to the company. The author proposes that companies should adopt a mediation clause to facilitate communication between activist investors and shareholders. The argument advances by stating that this opportunity for discussion would reduce or avoid aggressive, public proxy battles.

{21} MEDIATION — GENERAL
{81} SUBJ MATTER: CORPORATE
{106} SUBJ MATTER: SECURITIES

{134} DISPUTE PREVENTION

Robert G. Bone, Tyson Foods *and the Future of Statistical Adjudication,* 95 N.C. L. REV. 607 (2017).

This article investigates statistical adjudication, a controversial method of alternative dispute resolution. Statistical adjudication is a method in which samples are taken and statistical methods are used to resolve large groups of cases, rendering a decision based on aggregate statistics of the component cases rather than the facts of any one specific case. The article explores a Supreme Court case, *Tyson Foods, Inc. v. Bouaphakeo*, and how statistical adjudication was used to determine liability and damages.

{60} ADR — GENERAL
{81} SUBJ MATTER: CORPORATE
{149} QUALITY CONTROL

Gary B. Born and Adam Raviv, *The Abyei Arbitration and the Rule of Law,* 58 HARV. INT'L L.J. 177 (2017).

This article examines the widely publicized international arbitration that occurred in 2008-2009 to determine the boundaries of the Abyei region of southern Sudan in the decades following a civil war. The authors suggest that the arbitral reward compromised the principles of judicial restraint and the rule of law by disregarding the terms of the tribunal's mandate and the thoroughly reasoned determination by experts appointed by the parties.

{44} ARBITRATION — GENERAL
{92} SUBJ MATTER: INT'L
{137} EFFECT OF PROCESS ON NON-PARTICIPATORY PARTIES

Wayne D. Brazil, *When "Getting It Right" Is What Matters Most, Arbitrations Are Better Than Trials*, 18 CARDOZO J. CONFLICT RESOL. 277 (2017).

This essay analyzes the different factors and characteristics that distinguish trials from arbitrations. The piece further explores how the different traits between trials and arbitrations affect the quality of the outcome. The author concludes that, in some circumstances, arbitrations conducted by conscientious arbitrators tend to result in better quality decisions than trials conducted by conscientious judges.

{44} ARBITRATION — GENERAL
{73} SUBJ MATTER: GENERAL
{136} ECONOMIC ADVANTAGES OF ADR

Douglas Brooking, *The Curse of Black Gold: How Maritime Oil Reserves Can Sink International Negotiations*, 2 OIL & GAS, NAT. RESOURCES, & ENERGY J. 651 (2017).

This article advocates for the inclusion of private oil and gas companies in dispute resolutions in matters of territorial claims over subsea oil and gas. The article first explains the history of dispute resolution in this field and gives examples of previous international oil and gas disputes. The author highlights the potential success of corporate-led negotiations.

{1} NEGOTIATION — GENERAL
{97} SUBJ MATTER: MARITIME
{125} COMPARISONS: HISTORICAL

Carlo Brooks, *Arbitrability in Bilateral Investment Treaties: The Case that Applied International Law to Justify its Non-Application*, 23 SW. J. INT'L L. 303 (2017).

This article discusses the result of *BG Group PLC v. Republic of Argentina* to show how international treaty interpretation differs from treaty interpretation in the United States. This holding allows private multinational commercial organizations to submit their disputes directly to arbitration, thus avoiding the laws of the organization's home country. In response, the article suggests that United States courts repurpose international law conditions on consent to arbitration.

{44} ARBITRATION — GENERAL
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL

Wesley R. Bulgarella, *A Better Forum for All: Addressing the Value of Arbitration Clauses in Nursing Home Contracts*, 86 MISS. L.J. 365 (2017).

This comment argues that the benefits of (perhaps unknowingly) signing mandatory arbitration clauses in nursing home contracts greatly outweighs the negatives imposed by such clauses, as it helps to reduce the litigation costs incurred by nursing home facilities and thus allow them to provide better health care to their elderly residents.

{45} ARB: MANDATORY, COURT-ANNEXED — GENERAL
{89} SUBJ MATTER: HOSPITALS
{136} ECONOMIC ADVANTAGES OF ADR

Petra Butler, *Red Riding Hood – Is Investor-State Arbitration the Big Bad Wolf?*, 5 PENN. ST. J.L. & INT'L AFF. 328 (2017).

This paper proposes a framework that will allow for the consistent inclusion of the International Bill of Human Rights (IBR) as a benchmark in investor-state dispute settlement. A consistent human rights benchmark is important since investor state dispute settlement can take place in competing jurisdictions such as national courts, investment arbitration, regional human rights courts, or the International Court of Justice. There is therefore a need for promoting a consistent standard of human rights among diverse national, regional and worldwide courts, and alternative dispute settlement proceedings.

{44} ARBITRATION — GENERAL
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL

Olga Bykov, *Vindication of Federal Statutory Rights: The Future of Cost-Based Challenges to Arbitration Clauses After* American Express

v. Italian Colors Restaurant *and* Green Tree v. Randolph, 50 U.C. DAVIS L. REV. 1323 (2017).

The article argues that there is one sole factor driving the decision to bring an employment or consumer purchase dispute: cost. The author contends that the Federal Arbitration Act (FAA) has preempted state doctrines regarding arbitration clauses. The author argues further that state courts have attempted to cabin the expanding power of the FAA through liberal interpretations of arbitration clauses. Ultimately, this article discusses how lower courts have interpreted challenges to plaintiffs' inability to effectuate statutory rights in arbitration due to cost in light of the seminal cases *Green Tree Financial v. Randolph* and *American Express v. Italian Colors Restaurant.*

{45} ARB: MANDATORY, COURT ANNEXED—GENERAL
{79} SUBJ MATTER: CONSUMER
{93} SUBJ MATTER: LABOR — GENERAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES TO USE

Emmaline Campbell, *How Domestic Violence Batterers Use Custody Proceedings in Family Courts to Abuse Victims, and How Courts Can Put a Stop to It*, 24 UCLA WOMEN'S L.J. 41 (2017).

This article analyzes the ways in which domestic violence batterers use family court proceedings to continue to abuse their victims even after the relationship ends. This abuse manifests itself in many ways throughout the course of divorce and custody, including forcing the victim to return to court numerous times, coercing the victim in mediation sessions, and refusing to pay child support.

{21} MEDIATION — GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{138} ETHICS: GENERAL
{147} POWER IMBALANCE

Jeremy Cantor, *Rwanda and the Kigali International Arbitration Centre: The Future Faces of East African Arbitration and Growth*, 19 CARDOZO J. CONFLICT RESOL. 93 (2017).

This article discusses Rwandan history, particularly Rwanda's judicial history, and why arbitration is fitting for Eastern Africa and its push for economic growth. Specifically, this article argues that Kigali, the capital of Rwanda, should be the go-to seat for arbitration.

{44} ARBITRATION — GENERAL
{92} SUBJ MATTER: INT'L
{125} COMPARISONS: HISTORICAL

Meng Chen, *Emerging Internal Control in Institutional Arbitration*, 18 CARDOZO J. CONFLICT RESOL. 295 (2017).

This article analyzes emerging internal control in the international commercial arbitration setting. The first portion examines several arbitration rules and how they have been revised throughout history. The author then explores research on representative institutional arbitration rules, and thus shows both uniformity and divergence in these rules. The article concludes by emphasizing emerging and rising internal control and its effect on the whole arbitration world.

{44} ARBITRATION — GENERAL
{75} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: HISTORICAL

Pat K. Chew, *Contextual Analysis in Arbitration*, 70 SMU L. REV. 837 (2017).

This article generally examines arbitration by looking into each context – the arbitral institution, the arbitrators, the parties, the arbitration process, and the broader cultural and political environment. The author argues that these contexts inform ways in which one party may have an inherent advantage. The author looks specifically at arbitration in two different settings: domestic employment arbitrations and international trade arbitrations.

{44} ARBITRATION — GENERAL

{92} SUBJ MATTER: INT'L
{93} SUBJ MATTER: LABOR — GENERAL
{147} POWER IMBALANCE

Pat K. Chew, *Opening the Red Door to Chinese Arbitrations: An Empirical Analysis of CIETAC Cases 1990-2000*, 22 HARV. NEGOT. L. REV. 241 (2017).

This article reveals evidence-based details of the China International Economic and Trade Arbitration Commission (CIETAC) arbitral proceedings. Its findings give details on the who, what, when, and where of the arbitration cases handled by CIETAC, and allows for an opportunity to better understand the institution's previously mysterious dispute resolution process.

{44} ARBITRATION — GENERAL
{92} SUBJ MATTER: INT'L
{146} ORGANIZATION POLICIES & RULES

Rachel Childers, *Arbitration Class Waivers, Independent Contractor Classification, and the Blockade of Workers' Rights in the Gig Economy*, 69 ALA. L. REV. 533 (2017).

This article addresses the explosive movement from traditional, full-time employment to alternative, contingent work arrangements (the "gig economy"). Particularly, it discusses the circuit split on the enforceability of class action and aggregate arbitration waivers clauses that "gig economy" businesses require their workers to agree to before using their services, leaving them with individual arbitration as the only venue for resolving any disputes arising from this relationship.

{45} ARB: MANDATORY, COURT-ANNEXED — GENERAL
{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Zachary D. Clopton, *Class Actions and Executive Power*, 92 N.Y.U. L. REV. 878 (2017).

The decline in private class enforcement class actions due to increasing difficulty to certify class actions and mandatory arbitration clauses are contributing to the reduction in deterrence and enforcement of some substantive rights. The author considers potential methods for executive enforcement to combat this phenomenon in the midst of legislative inaction.

{45} ARB: MANDATORY, COURT-ANNEXED — GENERAL
{93} SUBJ MATTER: LABOR — GENERAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Stephanie Cohen & Mark Morril, *A Call to Cyberarms: The International Arbitrator's Duty to Avoid Digital Intrusion*, 40 FORDHAM INT'L L.J. 981 (2017).

Cyberbreaches threaten the integrity of international commercial arbitrations. This article postulates that arbitrators must maintain their duty, in the face of online threats, to secure the confidentiality and legitimacy of the international commercial arbitration process. To meet their duties as digital infrastructure evolves and the legal field increasingly utilizes technology, arbitrators should complete a risk assessment and implement reasonable protective measures that consider the security threats in each arbitration.

{44} ARBITRATION — GENERAL
{75} SUBJ MATTER: COMMERCIAL
{78} SUBJ MATTER: COMPUTER
{92} SUBJ MATTER: INT'L
{149} QUALITY CONTROL

Lyn P. Cohn, *A Model for the Use of ADR to Efficiently Distribute a Significant Settlement Fund in Mass Claims Litigation Without Sacrificing an Individualized Assessment of Claims*, 18 CARDOZO J. CONFLICT RESOL. 699 (2017).

This article explores effective settlement models for class action suits, using a 2013 racial discrimination case as a study. The author discusses balancing individualized claims with a need for efficiency

throughout the process. She concludes that the future of significant settlements in class action suits is unclear; but when they do occur, the case study model proved to be effective and should be used in similar future cases.

{1} NEGOTIATION — GENERAL
{94} SUBJ MATTER: LABOR — DISCRIMINATION
{123} SETTLEMENT: PRESSURES TO SETTLE

Sarah Cole, *The Lost Promise of Arbitration*, 70 SMU L. REV. 849 (2017).

This article disputes the notion that arbitration tends to disadvantage minority disputants or provide them with quick decisions tainted by prejudice. It responds to Richard Delgado's seminal work, *Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution*, and attempts to shed greater light on the benefits of modern arbitration for minority disputants. Although still capable of improvement, arbitration may well provide greater protections to minority disputants than litigation.

{44} ARBITRATION — GENERAL
{73} SUBJ MATTER: GENERAL
{149} QUALITY CONTROL

Robert J. Condlin, *Online Dispute Resolution: Stinky, Repugnant, or Drab*, 18 CARDOZO J. CONFLICT RESOL. 717 (2017).

This article lays out an extensive background of Online Dispute Resolution (ODR). The author points out legal, moral, and political issues that current research on ODR does not discuss. The author raises numerous questions that he suggests proponents must answer, including how to make a semi-automated process like ODR fair to all disputants, and suggests several improvements that must be made to the ODR process if it ever becomes a state-sanctioned form of public dispute resolution.

{60} ADR — GENERAL

{78} SUBJ MATTER: COMPUTER
{149} QUALITY CONTROL

Charles B. Craver, *Do Alternative Dispute Resolution Procedures Disadvantage Women and Minorities?*, 70 SMU L. REV. 891 (2017).

This article examines the perceived challenges of women and minorities in alternative dispute resolution and analyzes whether these perceived challenges are real. The author argues that most ethnic and gender traits are irrelevant with respect to ADR today, and that there is no reason for women and minorities to believe they would be able to negotiate more advantageous terms through judicial proceedings than through ADR processes.

{60} ADR — GENERAL
{73} SUBJ MATTER: GENERAL
{147} POWER IMBALANCE

James Crawford, *The Ideal Arbitrator: Does One Size Fit All?*, 32 AM. U. INT'L L. REV. 1003 (2017).

This article addresses the changing expectations of arbitrators, and some of the criticisms an arbitrator may be subjected to when playing multiple roles, such as serving as both an arbitrator and counsel—even if the two roles are engaged in unrelated cases. The author attacks the notion that arbitrators should be confined to a narrow set of expectations, and contends that the required skill and quality of an arbitrator will vary depending upon context and practice area.

{44} ARBITRATION — GENERAL
{73} SUBJ MATTER: GENERAL
{151} ROLE OF LAWYERS

David Cromer, *The Great Escape: How One Plaintiff's Sidestep of a Mandatory Arbitration Clause Was Applied to A Class in* Bickerstaff v. SunTrust Bank, 68 MERCER L. REV. 539 (2017).

This note discusses the implications of the state of Georgia's decision to decline certiorari to *Bickerstaff v. SunTrust Bank*. In the case, a lower court held that because the lead plaintiff avoided the arbitration clause by filing his lawsuit, other potential class members could elect to join the class, which would automatically ratify the complaint. Although the plaintiff could not establish a class on the time of filing, the decision purportedly permits a class to form if other potential members opt to join.

{45} ARB: MANDATORY, COURT ANNEXED — GENERAL
{79} SUBJ MATTER: CONSUMER
{126} REQUIREMENTS: CONTRACTUAL CLAUSES TO USE

Paul R. DeMuro, *Keeping Internet Pirates at Bay: Ransomware Negotiation in the Healthcare Industry*, 41 NOVA L. REV. 349 (2017).

The author applies negotiation theory to the use of computer malware designed to extort ransom payments from its targets in the health care industry as an alternative resort when other defenses to HIPAA content fail.

{1} NEGOTIATION — GENERAL
{89} SUBJ MATTER: HOSPITALS
{78} SUBJ MATTER: COMPUTER
{132} CONFIDENTIALITY
{137} EFFECT OF PROCESS ON NON-PARTICIPATORY PARTIES

Daniel T. Deacon, *Agencies and Arbitration*, 117 COLUM. L. REV. 991 (2017).

Deacon analyzes benefits (and some drawbacks) to increasing federal administrative agencies' role in addressing concerns over the rise of private arbitrations. He posits agencies are better equipped to adjustment enforcement practices to help compensate for the misuses of class-arbitration bans then the federal court system. Deacon also affords a normative analysis of agencies' involvement in arbitration,

and provides the institutional mechanisms that diminish the agencies' potential to overregulate arbitration.

{45} ARB: MANDATORY, COURT-ANNEXED — GENERAL
{104} SUBJ MATTER: REGULATORY
{146} ORGANIZATION POLICIES & RULES

Ellen E. Deason, *Beyond "Managerial Judges": Appropriate Roles in Settlement*, 78 OHIO ST. L.J. 73 (2017).

This article argues for reform that would prevent judges assigned to a case for pretrial management and trial from serving as the neutral at a settlement conference or judicial mediation. Separating these roles would address the structural problems of coercion and partiality that can result from a dual neutral role, while also retaining the contributions of settlement judges. The proposal is informed by the history of judges' involvement in settlement and draws on principles that are already recognized in some local and state ADR rules.

{21} MEDIATION — GENERAL
{73} SUBJ MATTER: GENERAL
{123} SETTLEMENT: PRESSURES TO SETTLE
{133} COURT REFORMS

Richard Delgado, *Alternative Dispute Resolution: A Critical Reconsideration*, 70 SMU L. REV. 595 (2017).

The article argues that we will need to pay attention to the rise of deformalization in ADR among many shifts that favor well-heeled actors at the expense of the less powerful. This, in turn, will require attention to resurging inequality and the many measures that its defenders are putting into place, not merely in procedural law but across the board.

{44} ARBITRATION — GENERAL
{102} SUBJ MATTER: PUBLIC POLICY
{147} POWER IMBALANCE

Richard Delgado, *The Unbearable Lightness of Alternative Dispute Resolution: Critical Thoughts on* Fairness and Formality, 70 SMU L. REV. 611 (2017).

This article examines how the rise of alternative dispute resolution, especially mandatory arbitration, has led to unfairness in dispute resolution. Mainly, ordinary people are feeling the wrath of "alternative dispute resolution" when they are unable to receive fair decisions due to unequal bargaining power. Major corporations have used arbitration widely, and the benefits of arbitration and other forms of ADR have arguably favored those in power.

{60} ADR — GENERAL
{125} COMPARISONS: HISTORICAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES
{147} POWER IMBALANCE

Christina M. Dines, *Minors in the Major Leagues: Youth Courts Hit a Home Run for Juvenile Justice*, 31 NOTRE DAME J. L. ETHICS & PUB POL'Y 175 (2017).

This article discusses an approach to dispute resolution in the juvenile justice system by allowing youth to play a role in the process. The author discusses why peer involvement plays a key role in fulfilling the goals of rehabilitation and deterrence in the juvenile justice system. The author also focuses on how peer mentorship and participation in the legal process can benefit society by destigmatizing offenders and making it easier for offenders to reassimilate.

{60} ADR — GENERAL
{77} SUBJ MATTER: COMMUNITY
{149} QUALITY CONTROL

Christopher R. Drahozal, *Diversity and Uniformity in International Arbitration Law*, 31 EMORY INT'L L. REV. 393 (2017).

Drahozal suggests caution against the push for greater uniformity in international arbitration law. He claims the New York Convention and

the UNCITRAL Model Law have done well to make laws more uniform. Now, however, we must evaluate the marginal benefits of additional uniformity (namely reduction of transaction costs) against the costs of uniformity: loss of diversity and the necessary individualized fit of laws, as well as reduced innovation.

{44} ARBITRATION — GENERAL
{92} SUBJ MATTER: INT'L
{146} ORGANIZATION POLICIES & RULES

Danielle Ely, *Amending the Consent Decrees to Bring Musical Composition Licensing into the Free Market*, 35 CARDOZO ARTS & ENT. L.J. 605 (2017).

This article proposes that permitting musical composition copyright holders to negotiate without as much restriction as imposed by government regulations and statutes. The article suggests that permitting the negotiation to take place in conditions that are found in a free market situation would result in more accurate valuations. Those free-market conditions can be achieved by amending the consent decrees governing the American Society of Composers, Authors, and Publishers (ASCAP) and Broadcast Music Incorporated (BMI).

{1} NEGOTIATION — GENERAL
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT
{147} POWER IMBALANCE

Samantha Elie, *Why Wait So Long: The Cornelius Gurlitt Collection and the Need for Clear ADR Mechanisms in the Restitution of Looted Art*, 18 CARDOZO J. CONFLICT RESOL. 363 (2017).

The author uses this note to propose an international treaty that focuses on ADR mechanisms for restituting large troves of stolen art. The note puts its focus on the Cornelius Gurlitt Collection and suggests that the legal issues surrounding the Collection have been mishandled, resulting in a need for such an international treaty.

{60} ADR — GENERAL

{92} SUBJ MATTER: INT'L
{134} DISPUTE PREVENTION

Sherif Elnegahy, *Can Mediation Deliver Justice?*, 18 CARDOZO J. CONFLICT RESOL. 759 (2017).

This article analyzes the concept of justice through multiple perspectives: history, philosophy, and religion. The author then discusses two main methods of delivering justice, formal justice and creative justice. The article goes on to state how mediation can possibly achieve procedural justice, distributive justice, and restorative justice. This piece concludes by focusing on possible challenges with attempting to achieve forms of justice using mediation.

{21} MEDIATION —GENERAL
{73} SUBJ MATTER: GENERAL
{124} COMPARISONS: CROSS-CULTURAL
{125} COMPARISONS: HISTORICAL

Alexander English, *Calming the Waters: Environmental Mediation and Water Resources Disputes*, 47 TEX. ENVTL. L.J. 1 (2017).

This article discusses alternative dispute resolution, particularly mediation, in the context of environmental issues. The author weighs the pros and cons of using mediation to resolve water resource disputes, and recommends multiparty mediation as one potential way to resolve those disputes.

{21} MEDIATION — GENERAL
{84} SUBJ MATTER: ENVIRONMENT
{136} ECONOMIC ADVANTAGES OF ADR

Nancy D. Erbe, *Transforming International Conflict Resolution to Catch up with the Twenty-First Century (Promoting Collective Innovation)*, 35 WIS. INT'L L.J. 39 (2017).

This article argues that our international conflict resolution system must be updated. One potential update would be to have Norway, a

trusted nation-mediator, form a system to recognize other trusted nation-mediators. The author discusses how even countries that are not likely to be trusted as impartial mediators, such as Brazil and India, can contribute to international dispute resolution.

{21} MEDIATION — GENERAL
{92} SUBJ MATTER: INT'L
{133} COURT REFORMS

Andrew J. Fabianczyk, Lewis v. Epic*: An Employee Arbitration Odyssey*, 17 WIS. L. REV. 803 (2017).

This article explores how mandatory arbitration agreements apply to a substantial portion of the non-union workforce. The author contends employers force employees into bilateral arbitration by inserting a collective action waiver into arbitration agreements. He further posits that lower courts have extended the Supreme Court's recent interpretations of the Federal Arbitration Act (FAA) to enforce such waivers, notwithstanding the fact that enforcement deprives employees of their substantive rights under the National Labor Relations Act (NLRA).

{45} ARB: MANDATORY, COURT-ANNEXED — GENERAL
{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)
{127} REQUIREMENTS: MANDATE TO USE

Daniel A. Farber & Anne J. O'Connell, *Agencies as Adversaries*, 105 CALIF. L. REV. 1375 (2017).

This article analyzes recent examples of conflict between agencies and outsiders, particularly among President Trump's administration and different administrative agencies. It then illuminates the conflicts and dispute resolution mechanisms implemented to evaluate the success and contribution that alternative dispute resolution gives to effective democratic governance.

{60} ADR — GENERAL
{87} SUBJ MATTER: GOV'T

{104} SUBJ MATTER: REGULATORY
{146} ORGANIZATION POLICIES & RULES

Susan D. Franck et. al., *Inside the Arbitrator's Mind*, 66 EMORY L.J. 1115 (2017).

Anchoring itself in the mind of the arbitrator, this article offers an objective, empirical, and evidence-based approach to normative choices about transnational dispute system design, arguing that system designers should focus on structural and procedural reforms to decrease the risk of error and to promote quality decision-making in international economic dispute settlement.

{44} ARBITRATION — GENERAL
{92} SUBJ MATTER: INT'L
{149} QUALITY CONTROL

Cecilia O'Neill de la Fuente & José Luis Repetto Deville, *Main Features of Arbitration in Peru*, 23 ILSA J INT'L & COMP L. 425 (2017).

This article describes why arbitration in Peru is effective for three reasons: the national arbitration law, the court's respect of the law, and the users' respect for the law. The article looks at how the Peruvian courts have demonstrated a harmonious relationship with the arbitration system and how the arbitration system operates without much interference from Peruvian courts.

{44} ARBITRATION — GENERAL
{92} SUBJ MATTER: INT'L
{136} ECONOMIC ADVANTAGES OF ADR

Marcos D. García Domínguez, *Calculating Damages in Investment Arbitration: Should Tribunals Take Country Risk into Account?*, 34 ARIZ. J. INTL. & COMP. L. 95 (2017).

The author argues that investment arbitration tribunals should not consider country risk when calculating damages. However, if

arbitration tribunals are going to continue to use country risk, there should be consistency in their assessment. The author explains why there have been inconsistencies, discussing the various valuation models.

{44} ARBITRATION — GENERAL
{92} SUBJ MATTER: INT'L
{146} ORGANIZATION POLICIES & RULES

Douglas W. Gates, *International Law Adrift: Forum Shopping, Forum Rejection, and the Future of Maritime Dispute Resolution*, 18 CHI. J. INT'L L. 287 (2017).

This article conducts an analysis of existing case law and tests various academic theories about forum shopping to determine why states opt for each of the various courts or tribunals when submitting a dispute for resolution under maritime conventions. It finds that subject matter is the best predictor of forum selection, as each forum has made use of comparative advantages to gain a foothold in particular areas of the law.

{44} ARBITRATION — GENERAL
{97} SUBJ MATTER: MARITIME
{149} QUALITY CONTROL

James Gathii & Cynthia Ho, *Regime Shifting of IP Lawmaking and Enforcement from the WTO to the International Investment Regime*, 18 MINN J. L. SCI. & TECH. 427 (2017).

This article considers the impact of the rise in investor-state arbitration to resolve intellectual property right disputes and makes suggestions as to how to counter the negative consequences of investor-state arbitration. The article argues that the shift to investor-state arbitration could destabilize Trade-Related Aspects of Intellectual Property (TRIPS) flexibilities such as patentability standards and data exclusivity. Further, the article makes recommendations on how to counter the destabilizing effect investor-state arbitration has on TRIPS.

{44} ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY
{149} QUALITY CONTROL

Juan Garay, *Abuse of Process Through Corporate Restructuring of Assets: The Legal Standard for the Multinational Investor,* 35 B.U. INT'L L.J. 397 (2017).

Under foreign direct investment, investors are bound by different duties and granted different protections by bilateral investment treaties. Treaty shopping is a legitimate process, but a dispute may arise from a treaty shopping claim. This paper advances the *Phonix* standard, which is one of the approaches arbitral tribunals may use to resolve treaty shopping claims.

{44} ARBITRATION — GENERAL
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL

Oliver Gayner & Susanna Khouri, *Singapore and Hong Kong: International Arbitration Meets Third Party Funding*, 40 FORDHAM INT'L L.J. 1033 (2017).

Several jurisdictions have enacted legislation to allow third-party funding for arbitration cases, the latest of which is Singapore. Authors Oliver Gayner and Susanna Khouri go through the history of jurisdictions that have legalized third-party funding and examine how this practice impacts the courts' regulatory authorities and trial practice in general. Hong Kong is the latest jurisdiction attempting to enact legislation in this vein, and the article concludes by identifying key issues that may arise from third-party arbitration funding for jurisdictions like Hong Kong.

{44} ARBITRATION — GENERAL
{104} SUBJ MATTER: REGULATORY
{124} COMPARISONS: CROSS-CULTURAL

{144} LEGISLATION

Eric George, *A Historical Reflection on Arbitration and the Corporation as an Object of Economic Governance*, 39 W. NEW ENG. L. REV. 557 (2017).

This article analyzes the jurisprudence of the U.S. Supreme Court in enforcing mandatory arbitration clauses. The article provides an overview of critical responses to the Court's rulings in *AT&T Mobility v. Concepcion* and *American Express v. Italian Colors Restaurant.* Then, the article traces this arbitration regime throughout history, and shows how the Federal Arbitration Act sought to promote the principles of business that are perpetuated today through the Court's holdings.

{45} ARB: MANDATORY, COURT-ANNEXED — GENERAL
{79} SUBJ MATTER: CONSUMER
{125} COMPARISONS: HISTORICAL
{147} POWER IMBALANCE

Alexandra Genoa, *How Statutory Attorney's Fees Can Prevent Successful Outcomes in Mediations*, 30 GEO. J. LEGAL ETHICS 767 (2017).

The American legal system allows plaintiffs to recover their attorney fees if they prevail in litigation. However, this creates an incentive for the plaintiff's attorney to win rather than compromise. The note discusses how fee-shifting provisions can negatively impact a client's success in mediations, and suggests preliminary solutions for attorneys and mediators to help tackle this issue.

{21} MEDIATION — GENERAL
{99} SUBJ MATTER: OTHER PROF MALPRACTICE
{123} SETTLEMENT: PRESSURES TO SETTLE
{151} ROLE OF LAWYERS

Alison Giest, *Interpreting Public Interest Provisions in International Investment Treaties*, 18 CHI. J. INT'L L. 321 (2017).

This article analyzes investor-state arbitral provisions within various bilateral and multilateral investment agreements. Specifically, the article asks how much regulatory liberty the U.S. Model Bilateral Investment Treaty, The North American Free Trade Agreement (NAFTA), and the Trans-Pacific Partnership (TPP) each provide to states where ambiguities in treaties exist.

{44} ARBITRATION — GENERAL
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL

J. Maria Glover, *The Supreme Court's "Non-Transsubstantive" Class Action*, 165 U. PA. L. REV. 1625 (2017).

This article analyzes the United States Supreme Court's role in decisions involving arbitration provisions that prohibited class action lawsuits. Overall, the article examines the substantive rules and policy behind the Supreme Court's apparently disparate decisions involving this subject. Furthermore, this article discusses the Court's interpretation of the Federal Arbitration Act, finding that class actions are inconsistent with the concept of arbitration.

{45} ARB: MANDATORY, COURT-ANNEXED — GENERAL
{102} SUBJ MATTER: PUBLIC POLICY
{127} REQUIREMENTS: MANDATE TO USE

Russell M. Gold, Carissa Byrne Hessick, and F. Andrew Hessick, *Civilizing Criminal Settlements*, 97 B.U. L. REV. 1607 (2017).

This article advocates for criminal justice reform to emulate civil litigation principles and procedures in the way that it encourages settlements. The authors discuss multiple procedural changes that should be made to make settlements less coercive while also encouraging more informed, voluntary bargaining. For example, the criminal system should heighten pleading standards, implement more lenient discovery rules, allow judicial participation in plea negotiation, and more.

{1} NEGOTIATION — GENERAL
{82} SUBJ MATTER: CRIMINAL
{121} SETTLEMENT: AUTHORITY
{147} POWER IMBALANCE

Marc J. Goldstein, *A Glance into History for the Emergency Arbitrator*, 40 FORDHAM INT'L L.J. 779 (2017).

Goldstein aims to provide emergency arbitrators in international commercial arbitration cases with the historical context for major terms concerning provisional relief. He identifies three terms - *prima facie*, irreparable harm, and *prima facie* case on the merits - as flexible standards that project discretion upon emergency arbitrators. The author's purpose is to highlight subtleties of difference in these phrases to assist the time-constrained emergency arbitrator and enhance predictability of the process.

{44} ARBITRATION — GENERAL
{75} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INT'L
{125} COMPARISONS: HISTORICAL

Alexandre de Gramont, Michael D. Igyarto, & Tatiana Sainati, *Divergent Paths: Settlement in US Litigation and International Arbitration*, 40 FORDHAM INT'L L.J. 953 (2017).

The authors compare the difference in settlement rate between international arbitration and U.S. litigation cases, underlined by judges' promotion of settlement in contrast to international arbitrators' reluctant suggestions for settlement. They review the history of and reasons for this contrast, then posit that international arbitrators cannot promote settlements at the same rate as judges. They then provide steps for arbitrators to encourage settlement while meeting their obligations of impartiality.

{44} ARBITRATION — GENERAL
{92} SUBJ MATTER: INT'L

{123} SETTLEMENT: PRESSURES TO SETTLE
{124} COMPARISONS: CROSS-CULTURAL

Michael Z. Green, *Reconsidering Prejudice in Alternative Dispute Resolution for Black Work Matters*, 70 SMU L. REV. 639 (2017).

This article explores the concern of racial prejudice when using alternative dispute resolution in the workplace, as the Black Lives Matter era has led to situations where workplace disputes have arisen with respect to discussions about race. The article asserts that black employees can find racial justice in a workplace that uses a modified merger of the mediation and arbitration program developed by those parties.

{60} ADR — GENERAL
{76} SUBJ MATTER: CIVIL RIGHTS
{93} SUBJ MATTER: LABOR — GENERAL
{134} DISPUTE PREVENTION

Michael Z. Green & Kyle T. Carney, *Can NFL Players Obtain Judicial Review of Arbitration Decisions on the Merits When a Typical Hourly Union Worker Cannot Obtain this Unusual Court Access*, 20 N.Y.U. J. LEGIS. & PUB. POL'Y 403 (2017).

This article discusses the discrepancy in access to arbitration information between NFL employees, all unionized as part of the NFL Players' Association, and non-NFL unionized employees. NFL players and other professional athletic associations have disproportionate access to private dispute information, which would typically be closed off to members of the general population. It also discusses the perception that level of wealth can affect access to the justice system.

{44} ARBITRATION — GENERAL
{93} SUBJ MATTER: LABOR — GENERAL
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT
{147} POWER IMBALANCE

Elayne E. Greenberg, *Realizing the Gap Between Rationality and Information*, 74 WASH. & LEE L. REV. 47 (2017).

This article critiques *Realizing Rationality: An Empirical Assessment of International Commercial Mediation* (23 WASH. & LEE L. REV. 1973 (2016)). The author makes several suggestions to further future empirical research and makes several suggestions to strengthen the previous research to fill the information gap concerning international commercial mediation for the United Nations Commission on International Trade (UNICITRAL).

{21} MEDIATION — GENERAL
{75} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INTERNATIONAL
{146} ORGANIZATION POLICIES & RULES

Lindsay Goldbrum, *Suspended Sentence Contingent Upon Participation in Victim-Offender Mediation for Juveniles Who Commit Violent Crimes*, 18 CARDOZO J. CONFLICT RESOL. 391 (2017).

This note examines the potential benefits of creating a system that suspends sentences of juveniles who have been convicted of violent crimes if they participate in victim-offender mediation. The note explores the history of mediation and restorative justice as well as the goals of victim-offender mediation. The author addresses a number of other benefits that may result from victim-offender mediation.

{21} MEDIATION — GENERAL
{82} SUBJ MATTER: CRIMINAL
{136} ECONOMIC ADVANTAGES OF ADR

Florian Grisel, *Competition and Cooperation in International Commercial Arbitration: The Birth of a Transitional Legal Profession*, 51 LAW & SOC'Y REV. 790 (2017).

This article discusses the sociology of international commercial arbitration on the basis of archives and data. The data provided casts new light on the competition between "grand old men" and "young

technocrats" in the 1980's and 1990s, a theme that has structured the analysis of international commercial arbitration.

{44} ARBITRATION — GENERAL
{75} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INT'L
{125} COMPARISONS: HISTORICAL

Deepak Gupta & Lina Khan, *Arbitration as Wealth Transfer*, 35 YALE L. & POL'Y REV. 499 (2017).

This article argues that the prevalence of forced arbitration is an outcome and contributor to economic inequality. The authors argue that forced arbitration transfers wealth upwards and provides less favorable outcomes for workers and consumers.

{45} ARB: MANDATORY, COURT-ANNEXED — GENERAL
{79} SUBJ MATTER: CONSUMER
{93} SUBJ MATTER: LABOR — GENERAL
{127} REQUIREMENTS: MANDATE TO USE
{147} POWER IMBALANCE

Nico Gurian, *Rethinking Judicial Review of Arbitration*, 50 COLUM. J.L. & SOC. PROBS. 507 (2017).

This article argues that the arguments in favor of a deferential standard of review do not align with the current realities surrounding arbitration and the way it is used. First, this piece analyzes how the Supreme Court has interpreted the Federal Arbitration Act. Next, arguments for limited review of arbitration outcomes such as autonomy, efficiency, finality, and flexibility are explored and the author argues that the justifications rely on assumptions that do not play out in the arbitration system. Last, this article proposes a change in the standard of review in arbitration decisions.

{44} ARBITRATION — GENERAL
{73} SUBJ MATTER: GENERAL
{149} QUALITY CONTROL

Margareta Habazin, *Investor Corruption as a Defense Strategy of Host States in International Investment Arbitration: Investors' Corrupt Acts Give an Unfair Advantage to Host States in Investment Arbitration*, 18 CARDOZO J. CONFLICT RESOL. 805 (2017).

This article explores the International Centre for Settlement of Investment Disputes (ICSID) and the corruption defense. The purpose is to show that ICSID tribunals should not follow precedent when refusing recovery to corrupt investors. The author argues that following precedent will create an unfair position to host states; therefore, appropriate legal responses should be used for investor misconduct and additional parties should also bear the consequences of corruption during arbitration.

{44} ARBITRATION — GENERAL
{92} SUBJ MATTER: INT'L
{106} SUBJ MATTER: SECURITIES
{146} ORGANIZATION POLICIES & RULES

Melika Had, *An Arbitral Solution: A Private Law Alternative to Bankruptcy for Puerto Rico, Territories, and Sovereign Nations*, 85 GEO. WASH. L. REV. 1263 (2017).

The United States Bankruptcy code explicitly excludes Puerto Rico from its jurisdiction. As Puerto Rico struggles under crushing debt, this article offers a private law alternative for Puerto Rico so that the territory does not have to wait for the United States or other international bodies to act. This alternative would allow Puerto Rico and other similar situated territories to restructure their debt. The arbitral framework is also discussed more broadly, for issues outside of bankruptcy protection.

{44} ARBITRATION — GENERAL
{74.5} SUBJ MATTER: BANKRUPTCY
{133} COURT REFORMS
{144} LEGISLATION

Emilie M. Hafner-Burton, Sergio Puig & David G. Victor, *Against Secrecy: The Social Cost of International Dispute Settlement*, 42 YALE J. INT'L L. 279 (2017).

This article debates the value of transparency during international dispute settlement, and addresses two contrasting arguments: the contention that transparency can help promote stable expectations, international rules and decreased costs, and comparatively, the assertion that transparency has the potential to arm opposing parties with information that can be used to their advantage. Specifically focusing on the value of transparency in the context of investor-state arbitration, the author concludes that transparency is favored to the detriment of failing to recognize the incentives behind divulging certain information.

{44} ARBITRATION — GENERAL
{92} SUBJ MATTER: INT'L
{106} SUBJ MATTER: SECURITIES
{132} CONFIDENTIALITY

Ghazi Hashimi, *Helping Afghanistan's Informal Dispute Resolution Systems Follow Afghan Law in Criminal Matters: What Afghanistan Can Learn from Native American Peacemaking Program*, 25 MICH. ST. INT'L. L. REV. 77 (2017).

This article discusses how dispute resolution practices as employed by Native American tribal systems could be utilized to solve disputes that arise within rural areas of Afghanistan. This article also suggests using formal and informal processes in specific cases as a solution to curtail the violations of human rights.

{60} ADR — GENERAL
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL

Jonathan S. Hermann, *Restoring Bankruptcy's Fresh Start*, 86 FORDHAM L. REV. 189 (2017).

The common nature of class-waiving arbitration clauses blocks debtors from pursuing creditor discharge injunction violations in any form of dispute resolution outside of binding individual arbitration. This note explores the impact these clauses have on the bankruptcy process, arguing that a legislative remedy must be created in order to allow class-action claims on this topic, as it would promote the fresh start that bankruptcy is meant to provide.

{45} ARB: MANDATORY, COURT-ANNEXED — GENERAL
{74.5} SUBJ MATTER: BANKRUPTCY
{126} REQUIREMENTS: CONTRACTUAL CLAUSES
{144} LEGISLATION

Alexandra Hoffman, *Mass Incarceration's Second Generation -- The Unintended Victims of the Carceral State and Thinking About Alternatives to Punishment Through Restorative Justice*, 7 U. MIAMI RACE & SOC. JUST. L. REV. 31 (2017).

This note discusses the social effects of incarceration on children, especially black and Hispanic children. The author looks at how alternative methods of punishment might alleviate social effects of parental incarceration on minors. The discussion centers on how the mechanisms of restorative justice involving all community stakeholders improve minority incomes vis-a-vis the current state of hyper-incarceration.

{60} ADR — GENERAL
{77} SUBJ MATTER: COMMUNITY
{83} SUBJ MATTER: CRIMINAL
{136} ECONOMIC ADVANTAGES OF ADR

Rebecca Hollander-Blumoff, *Fairness Beyond the Adversary System: Procedural Justice Norms for Legal Negotiation*, 85 FORDHAM L. REV. 2081 (2017).

The article considers how the rise of negotiation to resolve disputes may have consequences for participants' perceptions of procedural justice. It then discusses the relationship between procedural justice

and negotiation and provides factors that shape perceptions about procedural justice in negotiations. Lastly, it analyzes the ethical and strategic implications for practicing lawyers in settlement negotiations, wherein the judge, as a neutral third-party in the traditional adversarial system, is absent.

{1} NEGOTIATION — GENERAL
{73} SUBJ MATTER: GENERAL
{138} ETHICS: GENERAL
{151} ROLE OF LAWYERS

David M. Howard, *Creating Consistency Through a World Investment Court*, 41 FORDHAM INT'L L.J. 1 (2017).

This article proposes the creation of a legitimate, international "world investment court" that would better facilitate arbitrations by providing increased transparency and accountability. This would afford arbitrators more independence, applying consistent interpretations of investment law, while also removing the perception that arbitrators are biased towards investors. The article also provides point by point arguments against this idea and refutes them.

{44} ARBITRATION — GENERAL
{92} SUBJ MATTER: INT'L
{106} SUBJ MATTER: SECURITIES
{144} LEGISLATION

Jiali (Keli) Huang, *One Country, Two Systems: Hong Kong's Unique Status and the Development and Growth of Arbitration in China*, 18 CARDOZO J. CONFLICT RESOL. 423 (2017).

Looking at Hong Kong and China, this note examines the future of arbitration as the country continues to work on the reunification of the one-country, two-system model. The note identifies the unique identity of Hong Kong and provides an overview of the emerging field of arbitration in China. The note also addresses the possible ramifications for the white paper that the Chinese government issued in June 2014. The author suggests extending the "one country, two systems"

principle and using referenda to minimize tension between the Chinese government and the citizens of Hong Kong.

{44} ARBITRATION — GENERAL
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL

Otabek Ismailov, *Interaction of International Investment and Trade Regimes on Interpreting Treaty "Necessity" Clauses: Convergence or Divergence?*, 48 GEO. J. INT'L L. 505 (2017).

This article delves into the question of whether or not it is appropriate to utilize a Less Restrictive Means (LRM) test within an investor-state arbitration regime. The author contends that the World Trade Organization jurisprudence, which uses the LRM test to evaluate the necessity of state measures, cannot be directly imposed onto investor-state arbitration regimes, but can, however, operate as a valuable source for determining whether a state had other reasonable means for protecting the state's interest in a necessity circumstance.

{44} ARBITRATION — GENERAL
{92} SUBJ MATTER: INT'L
{106} SUBJ MATTER: SECURITIES
{146} ORGANIZATION POLICIES & RULES

Carol Izumi, *Implicit Bias and Prejudice in Mediation*, 70 SMU L. REV. 681 (2017).

Mediators' ability to actually conduct neutral mediations without bias, prejudice, or favoritism toward any party is extraordinarily difficult, if not impossible. Research shows that unconscious mental processes involving stereotypes and attitudes affect our judgments, perceptions, and behavior toward others. Implicit bias, the automatic association of stereotypes and attitudes with social groups, may produce discriminatory responses toward parties despite a mediator's best efforts at creating an outwardly even-handed process.

{21} MEDIATION — GENERAL

{73} SUBJ MATTER: GENERAL
{138} ETHICS: GENERAL
{149} QUALITY CONTROL

Russell W. Jacobs, *Cannabis Trademarks: A State Registration Consortium Solution*, 74 WASH. & LEE L. REV. ONLINE 159 (2017).

This article discusses trademark registration in the cannabis industry and suggests reforms at the state level. The author suggests that the owner of a state trademark registration should require consent to appealable arbitration of registration and infringement disputes. Additionally, the author suggests electronic arbitration in order to minimize costs, prevent home-state bias, and increase consistency of decisions through publication of these arbitral decisions.

{45} ARB: MANDATORY, COURT-ANNEXED — GENERAL
{75} SUBJ MATTER: COMMERCIAL
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY
{149} QUALITY CONTROL

David M. Jaros & Adam S. Zimmerman, *Judging Aggregate Settlement*, 94 WASH. U. L. REV. 545 (2017).

The rising practice of aggregate settlements has pushed the courts to intervene when not needed in order to protect the legitimacy of the courts. This practice can frustrate parties, upset the balance of the separation of powers, and cause the courts to overstep their bounds. The note proposes a method that courts can use to become useful fail-safes against abuse of aggregate settlement practices.

{60} ADR — GENERAL
{81} SUBJ MATTER: CORPORATE
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD
{133} COURT REFORMS

Thea Johnson, *Measuring the Creative Plea Bargain*, 92 IND. L.J. 901 (2017).

The author claims that skilled modern criminal defense attorneys should act as professional negotiators as they work to secure the best deals for their clients. The article discusses the idea that a good criminal defense lawyer should not be afraid to go to trial and should use litigation as a bargaining chip to get a better plea deal for their client. The author further discusses the negative implications on defendants who suffer from their attorney's unwillingness to litigate.

{1} NEGOTIATION — GENERAL
{82} SUBJ MATTER: CRIMINAL
{151} ROLE OF LAWYERS

Christine Kang, *Oriental Experience of Combining Arbitration with Conciliation: New Development of CIETAC and Chinese Judicial Practice*, 40 FORDHAM INT'L L.J. 919 (2017).

Kang discusses the widely-used Chinese hybrid dispute settlement mechanism that combines arbitration with conciliation. She provides some of the factors leading to this mechanism's success in China, including the continuing influence of Confucianism. Kang portrays a typical case under current rules in China, compares conciliation under these rules with those of other major arbitral institutions, and addresses some concerns about using the combination of arbitration with conciliation.

{44} ARBITRATION — GENERAL
{92} SUBJ MATTER: INT'L
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD
{125} COMPARISONS: HISTORICAL

Keith J. Kanouse, Evan M. Goldman, and Scott D. Salmon, *Are Material Changes to Renewal Franchise Agreements Subject to the Implied Covenant of Good Faith and Fair Dealing?*, 36 FRANCHISE L.J. 661 (2017).

This article discusses how franchisees seeking to renew their franchise agreements are often limited to either renewing the agreement under its prior terms or prohibited from renewing altogether. As a resolution, the author suggests a number of ways a franchisee can attempt to negotiate terms upon renewal with a franchisor, including mediation and arbitration, and offers potential arguments that could be made if one decides to alternatively proceed with litigation.

{60} ADR — GENERAL
{81} SUBJ MATTER: CORPORATE
{147} POWER IMBALANCE

Emily Katz, *Using Crisis Negotiation Team Methods to Decrease Violence in Prisons*, 18 CARDOZO J. CONFLICT RESOL. 883 (2017).

This article analyzes prison Crisis Negotiation Teams and suggests methods of negotiation that could reduce prison violence and recidivism rates. The author provides an overview of the Crisis Negotiation Team, while highlighting their successful tactics. The author argues that prison structure reform and use of these negotiation tactics could help lower prison violence overall and decrease the number of criminals who reoffend.

{1} NEGOTIATION — GENERAL
{100} SUBJ MATTER: PRISONS
{134} DISPUTE PREVENTION

Michaela Keet, *Litigation Risk Assessment: A Tool to Enhance Negotiation*, 19 CARDOZO J. CONFLICT RESOL. 17 (2017).

This article discusses how conducting a thorough risk assessment of possible outcomes of litigation will enhance the negotiation process as a whole. The risk assessment will give the party a better idea of what their BATNA (Best Alternative to Negotiated Agreement) is and what a potential ZOPA (Zone of Possible Agreement) would be. Additionally, the risk assessment can reduce the adversarial nature of negotiation and build trust between the parties.

{1} NEGOTIATION — GENERAL
{73} SUBJ MATTER: GENERAL
{136} ECONOMIC ADVANTAGES OF ADR

Bradford J. Kelley, *Quiet on the Employment Front: Mandatory Arbitration Under the USERRA*, 34 HOFSTRA LAB. & EMP. L.J. 367 (2017).

This article argues that military individuals should be permitted to bring their Uniformed Services Employment and Reemployment Rights Act (USERRA) claims in court rather than in mandatory and binding arbitration. It argues that due to the complexity of USERRA, the judicial system is better suited to handle these claims.

{45} ARB: MANDATORY, COURT-ANNEXED — GENERAL
{93} SUBJ MATTER: LABOR — GENERAL
{127} REQUIREMENTS: MANDATE TO USE

Ariel Monroe Kiefer *Are We All in This Together? Enforcing Class Arbitration Waivers,* 82 MO. L. REV. 925 (2017).

This article argues that mandatory class arbitration waivers are detrimental because they limit employees' ability to act collectively to enforce their rights. The article analyzes the Eighth Circuit's decision in *Cellular Sales of Missouri* to uphold a class action waiver, reviews tests federal circuit courts use in upholding and striking down class arbitration waivers, and discusses why the Eighth Circuit should not have upheld the waiver in *Cellular Sales of Missouri*.

{45} ARB: MANDATORY, COURT-ANNEXED — GENERAL
{96} SUBJ MATTER: LABOR — EMPLOYMENT (NON-UNION)
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Robert Klonoff, *Class Actions Part II: A Respite from the Decline*, 92 N.Y.U. L. REV. 971 (2017).

This article analyzes the role of the United States Supreme Court in promoting the inclusion and enforcement of arbitration provisions, which ultimately limit the availability of class action lawsuits.

{44} ARBITRATION — GENERAL
{73} SUBJ MATTER: GENERAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Ekrem Korkut & Woo Hyun Kang, *China's Nine Dash Line Claim in Light of the Ruling by the Permanent Court of Arbitration*, 5 PENN. ST. J.L. & INT'L AFF. 425 (2017).

This article explores the relationship between China, Malaysia, and Vietnam after the latter two made a joint submission to the Commission on the Limits of the Continental Shelf (CLCS) to establish outer limits of the continental shelf shared by the three countries. This paper evaluates China's nine-dash line claim under international law in light of the ruling by the Permanent Court of Arbitration over the dispute between the Philippines and China. It also evaluates the effect of the ruling on the delineation of the maritime areas of the South China Sea.

{38} NON-BINDING RECOMMENDATION PROC — GENERAL
{92} SUBJ MATTER: INT'L
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Vera Korzun, *The Right to Regulate in Investor-State Arbitration: Slicing and Dicing Regulatory Carve-Outs,* 50 VAND. J. TRANSNAT'L L. 355 (2017).

This article discusses the government's "right to regulate" in the context of modern-day international investment law and dispute resolution. The article critically examines certain provisions of the Trans-Pacific Partnership (TPP) and also discusses alternative solutions to the challenges faced in investor-state dispute settlement (ISDS). In conclusion, the author suggests that regulatory disputes are

best resolved through a "hybrid" dispute resolution system that is amenable to both private interests and public policy.

{60} ADR — GENERAL
{92} SUBJ MATTER: INT'L
{104} SUBJ MATTER: REGULATORY
{124} COMPARISONS: CROSS-CULTURAL

Julien G. Lamothe, *Cleaning up the Mess: The Eleventh Circuit Offers insight into §202 of the New York Convention by Defining "Performance Abroad"*, 41 TUL. MAR. L.J. 627 (2017).

This paper addresses *Alberts v. Royal Caribbean Cruises*, the 11th Circuit case which defined the term "performance abroad" in the United Nations Convention on the Recognition and Enforcement of Arbitral Awards and further discusses the issue of what satisfies the reasonable foreign-relation requirement under §202 of the Convention.

{44} ARBITRATION — GENERAL
{97} SUBJ MATTER: MARITIME
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Sarah Lesser, *Early Non-Military Intervention to Prevent Atrocity Crimes*, 19 CARDOZO J. CONFLICT RESOL. 129 (2017)

This article discusses the possibility of incorporating victim-offender meditation or negotiation as a more effective system of non-military atrocity prevention. The article examines the history of atrocity prevention and its shortcomings. It also evaluates situations where victim-offender mediation or negotiation has been used. The article then examines the differences and similarities between these mechanisms.

{60} ADR — GENERAL
{92} SUBJ MATTER: INT'L
{134} DISPUTE PREVENTION

Thomas J. Lilly, Jr., *Arbitrability and Severability in Statutory Rights Arbitration Agreements: How to Decide Who Should Decide*, 42 OKLA. CITY U. L. REV. 1 (2017).

What happens when arbitration prevents a statutory right? There are different approaches to this issue, as the standard for severing offending clauses depends on the jurisdiction. This article argues that the Tenth Circuit's approach, that the illegal provision is not severed from the agreement at all and the entire arbitration agreement becomes unenforceable, is correct.

{44} ARBITRATION — GENERAL
{104} SUBJ MATTER: REGULATORY
{128} REQUIREMENTS: STATUTORY OR RULES

Gregory J. Marsden & George J. Siedel, *The Duty to Negotiate in Good Faith: Are BATNA Strategies Legal?*, 14 BERKELEY BUS. L.J. 127 (2017).

This article examines Best Alternative to a Negotiated Agreement (BATNA) strategies in both civil law and common law systems. The negotiating power of each party depends primarily upon how attractive the option of walking away is. Thus, BATNA strategies might violate the duty to negotiate in good faith in civil law countries or raise other issues in common law countries where such a duty does not exist.

{1} NEGOTIATION — GENERAL
{73} SUBJ MATTER: GENERAL
{124} COMPARISONS: CROSS-CULTURAL
{139} ETHICS: MISREPRESENTATION & FAILURE TO DISCLOSE

Deborah Masucci & Shravanthi Suresh, *Transforming Business Through Proactive Dispute Management*, 18 CARDOZO J. CONFLICT RESOL. 659 (2017).

This article argues for a multi-dimensional step process when drafting "midnight clauses"—last-minute dispute resolution clauses. The

article urges for mechanisms to be put in place for businesses to prevent disputes and calls for a conflict resolution specialist in each company. The author addresses who dispute resolvers are today, who should qualify as a neutral in the future, and the need for diversity regarding the topic.

{60} ADR — GENERAL
{81} SUBJ MATTER: CORPORATE
{134} DISPUTE PREVENTION
{151} ROLE OF LAWYERS

Jennifer E. McIntosh & Evelyn S. Tan, *Young Children in Divorce and Separation: Pilot Study of Mediation-Based Co-Parenting Intervention*, 55 FAM. CT. REV. 329 (2017).

This article reports on a pilot study of mediation-based intervention for separated parents with very young children. The participants in the study were former couples having a co-parenting dispute regarding their child under the age of five years. Notably, the study found that for separated parents who attended mediation, the mediator's referral onto legal action was 35 percent lower.

{21} MEDIATION — GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{134} DISPUTE PREVENTION
{137} EFFECT OF PROCESS ON NON-PARTICIPATORY PARTIES

Jeremy McManus, *A Motion to Compel Changes to Federal Arbitration Law: How to Remedy the Abuses Consumers Face When Arbitrating Disputes*, 37 B.C. J. L. & SOC. JUST. 177 (2017).

Most corporations include complex arbitration agreements in consumer contracts, even though many consumers are not aware of these clauses, do not understand them, and are harmed by them. Because the Supreme Court has ruled that the Federal Arbitration Act (FAA) preempts state laws implemented to protect consumers, the

author argues that Congress should amend the FAA to allow states to declare forced arbitration agreements unconscionable.

{44} ARBITRATION — GENERAL
{79} SUBJ MATTER: CONSUMER
{144} LEGISLATION
{147} POWER IMBALANCE

Carrie Menkel-Meadow, *The Evolving Complexity of Dispute Resolution Ethics*, 30 GEO. J. LEGAL ETHICS 389 (2017).

In this article, Menkel-Meadow discusses the different ethical rules imposed upon lawyers who operate in different spheres of dispute resolution, including negotiators, mediators and arbitrators. In the analysis, she questions whether or not it is appropriate to impose differing rules of ethics, and expresses doubt about the adequacy of the Model Rules of Professional Conduct, asserting that the rules provide little guidance as it pertains to ethics for negotiators, arbitrators, mediators, and other legal facilitators.

{60} ADR — GENERAL
{73} SUBJ MATTER: GENERAL
{138} ETHICS: GENERAL

Michael Meyers, *Utilizing Alternative Dispute Resolution to Foster Comprehensive Traumatic Brain Injury Research*, 18 CARDOZO J. CONFLICT RESOL. 905 (2017).

Traumatic Brain Injuries (TBIs) have been the center of attention in the competitive sports industry, including the National Football League, in recent years. This article discusses the positive benefits of promoting the processes of alternative dispute resolution, specifically mediation, to help develop new TBI prevention policies and standards. Additionally, permitting mediation in the TBI context allows for more personalized results, because effective prevention remedies are different for each participant.

{21} MEDIATION — GENERAL

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT
{146} ORGANIZATION POLICIES & RULES

Chris Micheli, *California Must be Specified in Venue and Choice of Law Employment Contract Provisions*, 48 U. PAC. L. REV. 937 (2017).

This article considers California Senate Bill 1241, which targets mandatory arbitration clauses, to prevent California employees from being forced to litigate their California-based claims outside of California. The article discusses the life and evolution of this law and arguments in favor of and in opposition to the law. Finally, the article includes pointers on the law for practitioners.

{44} ARBITRATION — GENERAL
{73} SUBJ MATTER: GENERAL
{144} LEGISLATION

Robert Miller, *Nothing New: Consent, Forfeiture, and Bankruptcy Court Final Judgments*, 65 DRAKE L. REV 89 (2017).

This article addresses the tension between protecting a litigant's rights to an Article III tribunal and the desire for alternative adjudications by a non-Article III bankruptcy judge. Specifically, the article analyzes the authority of the bankruptcy judges to enter final judgements. Along with the history behind this practice, the article also discusses the individual's consent, default, and forfeiture of the right to an Article III judge.

{60} ADR — GENERAL
{74.5} BANKRUPTCY
{121} SETTLEMENT: AUTHORITY

Jessica Moran, *Appearance Standards and Arbitrators: Assessing Disciplinary Actions Pursuant to Grooming Policies in Arbitration*, 19 GEO. J. GENDER & L. 113 (2017).

In this note, author Jessica Moran discusses how female employees are often subject to higher standards of grooming policies imposed

through employee handbooks, requiring women to look and dress a certain way. This article addresses how arbitrators are evaluating the standards contained in grooming policies, and looks to the current laws that oversee grooming policies and how these laws affect employment relationships. Moran ultimately suggests that arbitrators should determine the reasonableness of a grooming policy by assessing whether the policy is based upon cultural stereotypes about female appearances.

{44} ARBITRATION — GENERAL
{94} SUBJ MATTER: LABOR — DISCRIMINATION
{146} ORGANIZATION POLICIES & RULES
{149} QUALITY CONTROL

Terry F. Moritz, *Can Consumers' Rights Effectively be Vindicated in the Post-*AT&T Mobility *World?*, 30 LOY. CONSUMER L. REV. 32 (2017).

This article discusses the U.S. Supreme Court's recent decisions on arbitration and analyzes empirical data on the matter. The author argues that claimants bringing small dispute amounts will not be able to enforce their rights, while large-dollar consumer claimants will not face the same barriers. Additionally, the author calls for further research to help attorneys and policymakers gain a better view of the arbitration landscape to help vindicate consumer rights.

{45} ARB: MANDATORY, COURT ANNEXED—GENERAL
{79} SUBJ MATTER: CONSUMER
{147} POWER IMBALANCE

James Morsch, *Unconscionability Should Not Be the Sole Arbiter of Whether to Enforce Mandatory Arbitration Provisions*, 30 LOY. CONSUMER L. REV. 24 (2017).

This article analyzes mandatory arbitration clauses in consumer contracts and addresses whether consumers should be concerned about these clauses. The author argues that in order to balance the consumer's right to due process and a business' possible motive of

directing consumers into arbitration, businesses must subject consumers to arbitration only if the amount in dispute falls below a reasonable monetary threshold.

{45} ARB: MANDATORY, COURT ANNEXED—GENERAL
{79} SUBJ MATTER: CONSUMER
{127} REQUIRMENTS: MANDATE TO USE

Margaret L. Moses, *How the Supreme Court's Misconstruction of the FAA Has Affected Consumers*, 30 LOY. CONSUMER L. REV. 1 (2017).

This article analyzes the Supreme Court's decisions on arbitration compared to the goals of the Federal Arbitration Act (FAA). The author analyzes forced arbitration agreements in consumer contracts and argues that the Supreme Court has misconstrued the original purpose behind the FAA through several decisions, most recently in cases such as *AT&T Mobility LLC v. Concepcion* and *American Express Co. v. Italian Colors Restaurant.*

{45} ARB: MANDATORY, COURT ANNEXED—GENERAL
{79} SUBJ MATTER: CONSUMER
{147} POWER IMBALANCE

Harry L. Munsinger & Donald R. Philbin, Jr., *Why Can't They Settle? The Psychology of Relational Disputes*, 18 CARDOZO J. CONFLICT RESOL. 311 (2017).

This article examines, from a psychological perspective, why it can be difficult for parties to settle. The article concludes that emotion and logic are the two types of influences that affect negotiation. They find emotion to be more effective when parties are in "intuitive information processing stages" and logic to be more persuasive when parties "conscious logical processing mode."

{1} NEGOTIATION — GENERAL
{73} SUBJ MATTER: GENERAL
{123} SETTLEMENT: PRESSURES TO SETTLE

Andrew Nadolna, Adrienne Publicover, & Daniel Garrie, *Why Arbitration Clauses May Make Sense in Cyber Insurance Policies*, 19 CARDOZO J. CONFLICT RESOL. 43 (2017).

This article proposes that insurance policyholders should advocate for an arbitration clause and the right to negotiate the terms of the arbitration. It also argues that insurers should provide policyholders with more options in the dispute resolution process. The authors argue that this will help prevent a flood of cybersecurity insurance disputes.

{44} ARBITRATION — GENERAL
{91} SUBJ MATTER: INSURANCE
{136} ECONOMIC ADVANTAGES OF ADR

Hoa Nguyen, *The Final Answer to the South China Sea Dispute*, 4 TEX. A&M L. REV. 287 (2017).

This article centers around the concept of principled negotiation. The author argues that by looking at parties' interests rather than their positions, it is easier to resolve conflicts. The author then applies these concepts to disputes between the countries that border the South China Sea.

{1} NEGOTIATION — GENERAL
{92} SUBJ MATTER: INT'L
{134} DISPUTE PREVENTION

David L. Noll, *Deregulating Arbitration*, 30 LOY. CONSUMER L. REV. 51 (2017).

This article addresses the Trump administration's approach to dealing with Obama-era agency arbitration rules. It discusses agency arbitration regulation under the Trump administration and addresses why some of the Trump administration's efforts to deregulate arbitration have failed while others have succeeded. The article points to divisions within the federal administrative state as one of the reasons why agency arbitration regulation has persisted.

{44} ARBITRATION — GENERAL
{87} SUBJ MATTER: GOV'T
{104} SUBJ MATTER: REGULATORY
{146} ORGANIZATION POLICIES & RULES

David L. Noll, *Regulating Arbitration*, 105 CAL. L. REV. 985 (2017).

This article analyzes arbitration's effects on the implementation and enforcement of federal regulatory statutes and argues that controlling these effects should be a central focus of efforts to regulate arbitration through new legislation and agency action. Noll looks at policy arguments for regulating arbitration, connecting them to demands for Congress and federal administrative agencies to regulate it.

{44} ARBITRATION — GENERAL
{87} SUBJ MATTER: GOV'T
{104} SUBJ MATTER: REGULATORY
{128} REQUIREMENTS: STATUTORY OR RULES

Note, *The Substantive Waiver Doctrine in Employment Arbitration Law*, 130 HARV. L. REV. 2205 (2017).

This article explains the substantive waiver doctrine and explores its evolution in Supreme Court arbitration jurisprudence. The article defends the Court's procedure-substance distinction and also discusses and responds to criticisms of the doctrine. The article finally concludes that when this doctrine is applied the question of whether collective action waivers are enforceable under the Federal Arbitration Act (FAA) and National Labor Relations Act (NLRA), those waivers are not enforceable.

{44} ARBITRATION — GENERAL
{93} SUBJ MATTER: LABOR — GENERAL
{127} REQUIREMENTS: MANDATE TO USE

Lydia Nussbaum, *Trial and Error: Legislating ADR for Medical Malpractice Reform*, 76 MD. L. REV. 247 (2017).

This article discusses the need for medical malpractice litigation reform. By focusing on the U.S. healthcare system, it explores how the current tort system fails, and discusses the claim that legislatures use ADR methods to reduce the number of cases in litigation.

{60} ADR — GENERAL
{98} SUBJ MATTER: MEDICAL MALPRACTICE
{134} DISPUTE PREVENTION
{144} LEGISLATION

Christine Neylon O'Brien, *Will the Supreme Court Agree with the NLRB that Pre-Dispute Employment Arbitration Provisions Containing Class and Collective Action Waivers in Both Judicial and Arbitral Forums Violate the National Labor Relations Act – Whether There is an Opt-Out or Not?*, 19 U. PA. J. BUS. L. 515 (2017).

This research paper analyzes five cases concerning mandatory arbitration clauses that prohibit joinder of individual employment claims. This paper also discusses the effects and implications of opt-out provisions. It argues that an opt-out provision does not save a mandatory arbitration clause prohibiting joinder of individual claims in employment disputes.

{45} ARB: MANDATORY, COURT-ANNEXED — GENERAL
{93} SUBJ MATTER: LABOR — GENERAL
{128} REQUIREMENTS: STATUTORY OR RULES

Bélen Olmos Giupponi, *Disentangling Human Rights and Investors' Rights in International Adjudication: The Legacy of the Yukos Cases*, 24 WILLAMETTE J. INT'L L. & DISP. RESOL. 127 (2017).

This article discusses the international adjudication arising from the expropriation of Yukos Oil Company. It additionally discusses fragmentation in contemporary adjudication and the articulation of judicial dialogue between international courts and tribunals and their domestic counterparts in light of the Yukos awards, the recent Russian Constitutional Court's decision on the enforcement of European Court of Human Rights (ECtHR) judgments and The Hague District Court's

ruling setting aside the Court's awards. Finally, the article outlines the possible implications of similar cases for the future.

{44} ARBITRATION — GENERAL
{92} SUBJ MATTER: INT'L
{106} SUBJ MATTER: SECURITIES
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Bernard H. Oxman, *The South China Sea Arbitration Award*, 24 U. MIAMI INT'L & COMP. L. REV. 235 (2017).

This article reviews the results of an arbitration dispute between the Philippines and China that took place under a tribunal constituted under Annex VII of the United Nations Convention on the Law of the Sea (UNCLOS). The result, released July 12, 2016, found that China's expansive maritime claims and actions in the South China Sea were not in convention with UNCLOS. The article discusses how China has rejected the arbitration on multiple grounds and how the arbitration result is not legally binding.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL
{92} SUBJ MATTER: INT'L
{146} ORGANIZATION POLICIES & RULES

Nizan Geslevich Packin & Benjamin P. Edwards, *Regulating Culture: Improving Corporate Governance with Anti-Arbitration Provisions for Whistleblowers*, 58 WM. & MARY L. REV. ONLINE 41 (2017).

This article argues that courts should not allow employers to use pre-dispute arbitration agreements to compel whistleblowers to arbitrate their Dodd-Frank claims. The authors review policy concerns for whistleblower actions that favor public actions in public courts. They then argue for a pragmatic interpretation of the statute that protects whistleblowers and the public's right to know by exempting Dodd-Frank's whistleblowers from arbitration.

{44} ARBITRATION – GENERAL
{81} SUBJ MATTER: CORPORATE
{127} REQUIREMENTS: MANDATE TO USE
{144} LEGISLATION

Diana Paraguacuto-Mahéo & Christine Lecuyer-Thieffry, *Emergency Arbitrator: A New Player in the Field - The French Perspective*, 40 FORDHAM INT'L L.J. 749 (2017).

Notwithstanding the uncertainties of utilizing emergency arbitrators for international commercial disputes—not limited to emergency arbitrators' powers, enforceability of decisions, and the relationship between emergency arbitration procedures and national courts—emergency arbitration procedures emerged and have perpetuated in response to market demands. The authors argue emergency arbitrations can be effective to meet parties' needs for interim relief, and it seems disputants are voluntarily abiding by these decisions despite enforceability concerns.

{44} ARBITRATION — GENERAL
{75} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INT'L
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Maria Lucia Passador, *Challenging Arbitration: How Can Its History Inform Its Current (E-)Practice?*, 24 WILLIAMETTE J. INT'L L. & DISP. RESOL. 233 (2017).

This article analyzes the history of arbitration with a focus on Italian context and information technology in relation to arbitration. The article also discusses online arbitration which, according to the author, incorporates information technology and maintains the arbitration process online through the use of less sophisticated procedures. The author states that arbitration is focusing more and more on the interests of e-commerce stakeholders.

{44} ARBITRATION — GENERAL

{78} SUBJ MATTER: COMPUTER
{92} SUBJ MATTER: INT'L
{125} COMPARISONS: HISTORICAL

Nikesh Patel, *An Emerging Trend in International Trade: A Shift to Safeguard Against ISDS Abuses and Protect Host-State Sovereignty*, 26 MINN. J. INT'L L. 273 (2017).

This article analyzes the emerging trend of investor-state dispute settlement (ISDS) and how to prevent investors from abusing against this form of dispute resolution. The author proceeds to conduct a comparison of the approaches various nations have taken to address the issue.

{60} ADR – GENERAL
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL
{149} QUALITY CONTROL

Ralph Peeples & John Sarratt, *Sinn Féin Amháin: Taking Collaborative Law Beyond Divorce*, 52 WAKE FOREST L. REV. 139 (2017).

The article explains collaborative law as an alternative dispute resolution method, and suggests expanding this method in order to advance other areas of civil practice, particularly family law in North Carolina.

{53} COLLABORATIVE LAW — GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{133} COURT REFORMS

Douglas Pivnichny, *Treaty-Based Claims Against Subdivisions of ICSID Contracting States*, 16 WASH. U. GLOBAL STUD. L. REV. 125 (2017).

This article takes a look at the International Centre for the Settlement of Investment Disputes (ICSID) and how the institution exercises

arbitration to resolve treaty disputes with its federally contracted states. Pivnichny takes a particular focus on when bilateral international treaties do not include choice of law provisions and how ICSID approaches such cases.

{44} ARBITRATION — GENERAL
{92} SUBJ MATTER: INT'L
{146} ORGANIZATION POLICIES & RULES

Avinash Poorooye & Ronan Feehily, *Confidentiality and Transparency in International Commercial Arbitration: Finding the Right Balance*, 22 HARV. NEGOT. L. REV. 275 (2017).

This article posits that the absence of a cohesive approach to confidentiality in international commercial arbitration renders the practice progressively more unpredictable. The authors examine issues raised by confidentiality in international commercial arbitration and explain how transparency may be used as a means to develop commercial arbitration practices.

{44} ARBITRATION — GENERAL
{75} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INT'L
{132} CONFIDENTIALITY

Gregory T. Presmanes & Phillip C. Kuck, *Ethical Negotiations: How Far is Too Far?*, 52 TORT & INS. L.J. 903 (2017).

This article discusses whether lawyers can lie in the context of negotiation. The authors discuss the scope and application of ethical rules with regard to express and implied misrepresentations of fact and punishments for unethical and deceitful behavior. Finally, the authors explain rules and guidelines that attorneys should follow to avoid issues of questionable ethics.
{1} NEGOTIATION — GENERAL
{99} SUBJ MATTER: OTHER PROF MALPRACTICE
{139} ETHICS: MISREPRESENTATION & FAILURE TO DISCLOSE

{151} ROLE OF LAWYERS

Marsha K. Pruett & Logan Cornett, *Evaluation of the University of Denver's Center for Separating and Divorcing Families: The First Out-of-Court Divorce Option*, 55 FAM. CT. REV. 375 (2017).

This article analyzes data collected from 82 families who participated in an alternative dispute resolution model developed at the University of Denver when separating and divorcing. The data looks at service utilization, process timeliness, family satisfaction, person well-being, parenting quality, and reports of children's anxiety and depression.

{60} ADR — GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{137} EFFECT OF PROCESS ON NON-PARTICIPATORY PARTIES

Victor D. Quintanilla, *Human-Centered Civil Justice Design,* 121 PENN ST. L. REV. 745 (2017).

This article discusses how human-centered civil justice can improve the civil justice system. Human-centered civil justice combines the insights from human-centered design thinking and dispute system design. The combination of these two practices helps the public understand how human experiences interact with the court system, including hardships and adversities individuals face within the legal system itself.

{60} ADR — GENERAL
{77} SUBJ MATTER: COMMUNITY
{133} COURT REFORMS

Victor D. Quintanilla & Alexander B. Avtgis, *The Public Believes Predispute Binding Arbitration Clauses are Unjust: Ethical Implications for Dispute-System Design in the Time of Vanishing Trials*, 85 FORDHAM L. REV. 2119 (2017).

This article discusses the fairness of pre-dispute binding arbitration clauses considering the phenomenon known as the "vanishing trial". The authors argue that the intention of those who draft pre-dispute binding arbitration clauses conflicts with the ethic that considers third parties and the public's desire for a fair, legitimate, and just civil justice system. This article presents empirical evidence on the public's response to these types of clauses and ties those results into a discussion regarding the regulations necessary to protect the public's desire for a fair, legitimate, and just civil system.

{45} ARB: MANDATORY, COURT-ANNEXED — GENERAL
{102} SUBJ MATTER: PUBLIC POLICY
{126} REQUIREMENTS: CONTRACTUAL CLAUSES
{147} POWER IMBALANCE

Waseem Ahmad Qureshi, *The Indus Waters Treaty and the Role of World Bank as Mediator*, 24 WILLAMETTE J. INT'L L & DISP. RESOL. 211 (2017).

This paper addresses the water conflict between India and Pakistan. The goal of this article is to interpret geopolitical developments within the confines of the Indus Waters Treaty (IWT), besides discussing and proposing preferred positions and strategic alternatives to pacify the regional and political skirmishes. This paper provides an overall picture of the events and circumstances that led to the IWT and the role of the World Bank as mediator to appoint a neutral expert and establish the Court of Arbitration to resolve disagreements between the parties.

{21} MEDIATION — GENERAL
{84} SUBJ MATTER: ENVIRONMENT
{92} SUBJ MATTER: INT'L

Orna Rabinovich-Einy & Ethan Katsh, *Access to Digital Justice: Fair and Efficient Processes for the Modern Age*, 18 CARDOZO J. CONFLICT RESOL. 637 (2017).

This keynote addresses the increase of online conflicts due to advances in technology. Online Dispute Resolution (ODR) has become an increasingly popular method of resolution with the rise of these disputes. This piece explains the need for ODR more now than ever. However, given that need, drawbacks to the process are also discussed. Given problems that are associated with ODR, values of efficiency and fairness are emphasized.

{60} ADR — GENERAL
{78} SUBJ MATTER: COMPUTER
{136} ECONOMIC ADVANTAGES OF ADR

Rashda Rana SC, *The Enforceability of Awards Set Aside at the Seat: An Asian and European Perspective*, 40 FORDHAM INT'L L.J. 813 (2017).

This article provides examples from different nations that demonstrate the debate over the enforceability of international arbitration decisions. Looking at American, English, French, and Singaporean contexts, the author argues that we should not be so quick to assume that an award which has been set aside by a supervisory court cannot be enforced in any other jurisdiction. The author provides the emerging body of cases that suggest otherwise.

{44} ARBITRATION — GENERAL
{92} SUBJ MATTER: INT'L
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD
{124} COMPARISONS: CROSS-CULTURAL

Peter R. Reilly, *Corporate Deferred Prosecution as Discretionary Injustice*, 2017 UTAH L. REV. 839 (2017).

This article argues that Deferred Prosecution Agreements (DPAs) should not be permitted as a way to resolve criminal allegations in corporate matters. If a DPA is used, there should be meaningful judicial review of such agreements. The author expresses concern for

both public interest and separation of powers principles surrounding Deferred Prosecution Agreements.

{1} NEGOTIATION – GENERAL
{81} SUBJ MATTER: CORPORATE
{82} SUBJ MATTER: CRIMINAL
{149} QUALITY CONTROL

Judith Resnik, *Lawyers' Ethics Beyond the Vanishing Trial: Unrepresented Claimants, De Facto Aggregations, Arbitration Mandates, and Privatized Processes*, 85 FORDHAM L. REV. 1899 (2017).

Resnik speaks of the disjuncture between legal ethics and today's litigation world. She argues that lawyers face great challenges in the morphing landscape of civil litigation, not limited to the declining rate of trials. Resnik contends that more forms of contemporary dispute resolution should be utilized when considering the roles and topics that legal ethics will address in the coming decades.

{60} ADR — GENERAL
{127} REQUIREMENTS: MANDATE TO USE
{138} ETHICS: GENERAL

Nina Roca, *Whose Land Is It Anyway? The Territorial and Maritime Dispute Over the Spratly Islands*, 12 FIU L. REV. 391 (2017).

This comment analyzes how China, Vietnam, the Philippines, Malaysia, and Brunei should address their claims over the Spratly Islands and how the current system of non-binding international arbitration under the United Nations Convention on the Law of the Sea (UNLCLOS) is ineffective. This comment argues the dispute over the Spratly Islands would be best settled through an agreement modeled after the Nigeria and São Tomé and Príncipe Joint Development Zone Agreement.

{38} NON-BINDING RECOMMENDATION PROC — GENERAL
{92} SUBJ MATTER: INT'L

{124} COMPARISONS: CROSS-CULTURAL

Christopher Rossi, *Nagorno-Karabakh and the Minsk Group: The Imperfect Appeal of Soft Law in an Overlapping Neighborhood*, 52 TEX. INT'L L.J. 45 (2017).

This article concentrates on the power-shifting attempts to facilitate solutions to disputes involving Nagorno-Karabakh, an enclave of Armenians in Azerbaijan. The article concentrates on the use of the soft law forum, the Minsk Group, problematizing the perceived theoretical advantages found in the literature that instantiate soft law's superior potential for solutions. The article contemplates the effects that powerful countries may cause whilst utilizing soft law forums to delay peaceful settlement.

{1} ADR — GENERAL
{92} SUBJ MATTER: INT'L
{123} SETTLEMENT: PRESSURES TO SETTLE
{136} ECONOMIC ADVANTAGES OF ADR

Fernanda S. Rossi, Amy Holtzworth-Munroe, Amy G. Applegate, Connie J. Beck, Jeannie M. Adams, and Darrell F. Hale, *Shuttle and Online Mediation: A Review of Available Research and Implications for Separating Couples Reporting Intimate Partner Violence or Abuse*, 55 FAM. CT. REV. 390 (2017).

This article looks at the issue of whether family cases with a history of severe intimate partner violence or abuse should have the option of settling family-related issues using mediation. Given the abusive nature of the relationship, two forms of mediation—shuttle mediation and online mediation—have been introduced to help expedite the mediation process while still keeping all parties safe.

{21} MEDIATION — GENERAL
{78} SUBJ MATTER: COMPUTER
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{147} POWER IMBALANCE

Ethan Rubin, *Independent Contractors or Employees? Why Mediation Should be Utilized by Uber and its Drivers to Solve the Mystery of How to Define Working Individuals in a Sharing Economy Business Model*, 19 CARDOZO J. CONFLICT RESOL. 163 (2017).

This article explores issues that arise in sharing economy business models with respect to employment status. Uber contracts drivers on an independent contractor basis, rather than on an employee basis. Additionally, this article suggests that Uber should utilize dispute resolution processes to help find solutions. The author states that mediation is currently a better option than arbitration for disputes between Uber and its drivers.

{21} MEDIATION — GENERAL
{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)
{136} ECONOMIC ADVANTAGES OF ADR

Robert Rubinson, *Indigency, Secrecy, and Questions of Quality: Minimizing the Risk of "Bad" Mediation for Low-Income Litigants*, 100 MARQ. L. REV. 1353 (2017).

This article explores the potential risks involved when low-income or indigent disputants enter into mediation processes. It discusses the moral and ethical responsibilities of those representing such clients in mediation and other forms of alternative dispute resolution and proposes guidelines for assessing the risks of such processes on a cost-benefit basis.

{21} MEDIATION — GENERAL
{102} SUBJ MATTER: PUBLIC POLICY
{138} ETHICS: GENERAL

Hiroharu Saito, *Do Professional Ethics Make Negotiators Unethical? An Empirical Study with Scenarios of Divorce Settlement*, 22 HARV. NEGOT. L. REV. 325 (2017).

This article examines how the Model Rules of Professional Conduct affect negotiation, especially in child custody negotiations. The author

asserts that the Model Rules and legal education in the U.S. diminish attorneys' ethical sense of fairness and public interest while enhancing loyalty to their clients.

{1} NEGOTIATION — GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{138} ETHICS: GENERAL

Peter Salem & Michael Saini, *A Survey of Beliefs and Priorities about Access to Justice of Family Law: The Search for a Multidisciplinary Perspective*, 55 FAM. CT. REV. 120 (2017).

This article discusses the results of an online survey that was administered to understand how legal, mental health, and dispute resolution professionals in various countries interpret the meaning of "access to justice." According to most survey participants, "access to justice" refers to disputants' ability to seek and obtain a remedy through formal or informal means to resolve their disputes. Finally, the article discusses possible implications for family court reforms.

{21} MEDIATION — GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{133} COURT REFORMS

Alexander Salter, *Ordering the Cosmos: Private Law and Celestial Property Rights*, 82 J. AIR L. & COM. 311(2017).

This article proposes a purely private legal system for space commerce as an alternative to government-defined and enforced property rights. Economic theory shows how property rights and rules for adjudicating disputes can be self-enforcing. Economic history shows that such a system has worked well for centuries in international trade. A private legal commercial order for space is thus both feasible and desirable.

{53} COLLABORATIVE LAW — GENERAL
{75} SUBJ MATTER: COMMERCIAL
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY
{134} DISPUTE PREVENTION

D. Greg Sakall & Julie A. Pack, *Short Trials: An Appropriate Replacement for Compulsory Arbitration in Arizona?*, 59 ARIZ. L. REV. 485 (2017).

This article discusses the creation of the Arizona Supreme Court's Committee on Civil Justice Reform, which recently proposed changing the decades-long rule of requiring parties with small dollar civil disputes to submit their disputes to compulsory non-binding arbitration before trial. The author argues that the committee should focus on improving the arbitration process rather than introducing alternative programs that are potentially fraught with constitutional and practical challenges.

{45} ARB: MANDATORY, COURT ANNEXED — GENERAL
{102} SUBJ MATTER: PUBLIC POLICY
{133} COURT REFORMS

Andrew Schepard, Marsha Kline Pruett, & Rebecca Love Kourlis, *The Family Law Bar, the Interdisciplinary Resource Center for Separating and Divorcing Parents, and the "Spark to Kindle the White Flame of Progress"*, 55 FAM. CT. REV. 84 (2017).

This article describes the services offered to families with children at the Interdisciplinary Resource Center for Separating and Divorcing Families at the University of Denver. These services, which are tailored to families' individual needs, include assessment and service planning, legal education, mediation, agreement and order drafting, therapeutic services, and financial planning. Studies show families benefit from the holistic services offered at this center.

{21} MEDIATION — GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{146} ORGANIZATION POLICIES & RULES

Julian Scheu, *Trust Building, Balancing and Sanctioning; Three Pillars of a Systematic Approach to Human Rights in International Investment Law and Arbitration*, 48 GEO. J. INT'L L. 449 (2017).

This article focuses on international investment arbitration, and addresses the complicated relationship between the two areas of law of foreign investments and human rights. Author Julian Scheu attempts to reconcile this tension by proposing a conceptual framework to give guidance on how and when the law of human rights should be considered and taken into account in the context of international investment arbitration.

{44} ARBITRATION — GENERAL
{92} SUBJ MATTER: INT'L
{106} SUBJ MATTER: SECURITIES
{137} EFFECT OF PROCESS ON NON-PARTICIPATORY PARTIES

Andrea Schneider, *Negotiating While Female*, 70 SMU L. REV. 695 (2017).

This article argues that blaming women for any lack of negotiation skills or efforts is inaccurate and that prevailing perceptions about women and negotiation are indeed myths. This article proposes an action plan which provides advice on how women can become more effective negotiators and identifies structural changes that might encourage negotiation and reduce the gender pay gap.

{1} NEGOTIATION — GENERAL
{102} SUBJ MATTER: PUBLIC POLICY
{149} QUALITY CONTROL

Matthew B. Seipel, *The Strong Do as They Can: How Employment Group-Action Waivers Alienate Employees*, 7 AM. U. LAB. & EMP. L.F. 1 (2017).

Through a contractual agreement, some employers require their employees to individually arbitrate their employment claims. This article examines the adverse effects on employees from group action waivers. The article specifically analyzed the alienating effect on employees. The author hopes to encourage further studies regarding the alienating effects that workplace laws have on employees.

{45} ARB: MANDATORY, COURT ANNEXED — GENERAL
{96} SUBJECT MATTER: EMPLOYMENT (NON-UNION)
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Ayelet Sela, *The Effect of Online Technologies on Dispute Resolution System Design: Antecedents, Current Trends, and Future Directions*, 21 LEWIS & CLARK L. REV. 635 (2017).
This article concentrates the increased reliance of courts on online dispute resolution (ODR) to handle cases in various legal domains. The author offers an overview and analysis of the development in ODR systems since their inception. The article examines progress and proposes methods for future improvement of ODR systems as well.

{60} ADR — GENERAL
{78} SUBJ MATTER: COMPUTER
{149} QUALITY CONTROL

Amaan A. Shaikh, *The Post-*Concepcion *Contract Landscape: The Role Socially Conscious Business Can Play*, 57 SANTA CLARA L. REV. 223 (2017).

This article criticizes contractual arbitration clauses as limiting workers' and consumers' access to the civil court system. It then discusses California's stance against federal pro-arbitration policy, and how the state has responded to this trend. Finally, the article investigates how B Corporations can take action to return court access to workers and consumers.

{45} ARB: MANDATORY, COURT-ANNEXED — GENERAL
{79} SUBJ MATTER: CONSUMER
{93} SUBJ MATTER: LABOR — GENERAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Donna Shestowsky, *When Ignorance Is Not Bliss: An Empirical Study of Litigants' Awareness of Court-Sponsored Alternative Dispute Resolution Programs*, 22 HARV. NEGOT. L. REV. 189 (2017).

This article details a study that examines litigants' ability to identify their court's mediation and arbitration programs. Although all litigants had cases that were eligible for both alternative dispute resolution procedures through their court, less than one-third correctly reported that their court offered either procedure. The article also discusses the views of the litigants based on the court's offerings of mediation or arbitration.

{60} ADR — GENERAL
{73} SUBJ MATTER: GENERAL
{149} QUALITY CONTROL

Harvey M. Shrage & Curt Hamakawa, *The Impact of Teacher Collective Bargaining Agreements on High School Coaches*, 27 MARQ. SPORTS L. REV. 373 (2017).

This article discusses the impact of teacher's union collective bargaining agreements (CBAs) on high school athletics coaches. It explores how multi-party negotiating interests interact in the collective bargaining process and how dispute resolution mechanisms are implemented across specific sub-classes of employees.

{44} ADR — GENERAL
{83} SUBJ MATTER: EDUCATION
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT
{147} POWER IMBALANCE

Anjela A. Shutts, *The Help: The Addition of Third Party Neutrals for Collaborative Divorce Practices*, 2017 DRAKE L. REV. DISCOURSE 101 (2017).

This article explores innovations in collaborative family law and how interest-based negotiation practice does not start by identifying the standard criteria or precedents that surround settlements. The author advocates for alternative dispute resolution methods that focus on the sole needs of the parties involved and decides what resources need to be made available for them to adequately resolve the dispute.

{53} COLLABORATIVE LAW — GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{133} COURT REFORMS

Shai Silverman, *Before the Godly: Religious Arbitration and the U.S. Legal System*, 65 DRAKE L. REV. 719 (2017).

This article analyzes the systemic and institutional questions that faith-based arbitral panels raise. Often, these panels are in tension with secular U.S. law, yet U.S. courts have regularly enforced arbitration agreements and awards reached by tribunals applying their unique religious laws. Ultimately, the paper address why the U.S. continues to enforce these religious arbitration agreements, and whether enforcing these agreements is valuable for U.S. law as a whole.

{44} ARBITRATION — GENERAL
{102} SUBJ MATTER: PUBLIC POLICY
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Fernando Dias Simões, *Amicus Curiae in the Trans-Pacific Partnership*, 54 AM. BUS. L.J. 161 (2017).

Simões analyzes benefits and drawbacks to the Trans-Pacific Partnership's (TPP) provisions allowing *amicus curiae* submissions to arbitral tribunals during investor-state arbitrations. He discusses the trend toward opening proceedings to third-party participation, and determines the success of amicus participation in arbitral proceedings is dependent upon the extent of nondisputing parties' participatory rights. Success will also depend on the provision's ability to ameliorate the perceived lack of transparency and public participation in investor-state arbitrations.

{44} ARBITRATION — GENERAL
{92} SUBJ MATTER: INT'L
{106} SUBJ MATTER: SECURITIES
{137} EFFECT OF PROCESS ON NON-PARTICIPATORY PARTIES

Fernando Dias Simões, *A Guardian and a Friend? The European Commission's Participation in Investment Arbitration*, 25 MICH. ST. INT'L L. REV. 233 (2017).

This article examines the participation of the European Commission in investor-state arbitrations and assesses its impact in the overall mechanism of investor-state dispute resolution. The author argues that due to its political, legislative, and executive functions, amicus curiae briefs submitted by the European Commission play a distinctive role in investor-state arbitrations, a role that may play a larger role than previously believed as more arbitral awards become public.

{44} ARBITRATION — GENERAL
{92} SUBJ MATTER: INT'L
{106} SUBJ MATTER: SECURITIES
{146} ORGANIZATION POLICY & RULES

Abraham D. Sofaer, *The Role of Arbitration in Political Settlement: Taba and the Egypt/Israel Treat of Peace*, 39 HOUS. J. INT'L L. 263 (2017).

This article discusses the role of arbitration in political settlement, especially as it relates to the border dispute between Egypt and Israel at Taba. It discusses the efficiencies of arbitration and how arbitration can serve as a structured settlement device. This article also looks towards the future, suggesting that arbitration can be a very viable dispute resolution process for international disputes.

{44} ARBITRATION — GENERAL
{92} SUBJ MATTER: INT'L
{134} DISPUTE PREVENTION

Frederic G. Sourgens, *Supernational Law*, 50 VAND. J. TRANSNAT'L L. 155 (2017).

This article focuses on whether the United States should continue to enter into free trade agreements that commit them to resolving

regulatory disputes before international arbitrators. Public opinion and political opposition have been critical of investor-state dispute settlement (ISDS) systems, claiming they suffer from an asymmetric favoring of multinational investors over host states in which those multinationals invest. The article proposes an alternative to the existing literature – that the ISDS protects the "reciprocal reliance interests" of states and multinationals.

{44} ARBITRATION — GENERAL
{92} SUBJ MATTER: INT'L
{106} SUBJ MATTER: SECURITIES
{147} POWER IMBALANCE

Kimberly Stamatelos, *Lawyers of the Future: Is Legal Education Doing its Part?* 2017 DRAKE L. REV. DISCOURSE 101 (2017).

This article discusses the changing nature of litigation and the role of modern lawyers in resolving disputes throughout society. It questions the methods of instruction in many law schools today and recommends increased incorporation of Alternative Dispute Resolution (ADR) skills to better equip future lawyers with tools they are often called upon to use in practice.

{60} ADR — GENERAL
{83} SUBJ MATTER: EDUCATION
{136} ECONOMIC ADVANTAGES OF ADR
{151} ROLE OF LAWYERS
{155} TEACHING

Hon. Brian Stern & Christopher Fragomeni, *The Triage and Treatment of Healthcare Institutions in Distress: How to Involve State Regulators in Healthcare Bankruptcies and Receiverships*, 22 ROGER WILLIAMS U. L. REV. 147 (2017).

This article analyzes the role of mediation in achieving regulatory involvement of reconciling interests of a healthcare debtor, healthcare creditor and state regulatory authorities. The article focuses on the role of mediation as a vehicle to coordinate and share information, rather

than posing as a method for final decision making. The author poses mediation as the perfect method for achieving a balance between the interests of the regulators, the debtor, and the creditor.

{21} MEDIATION — GENERAL
{74.5} SUBJ MATTER: BANKRUPTCY
{89} SUBJ MATTER: HOSPITALS
{134} DISPUTE PREVENTION

Spencer Stephens, *Tragedy of the Commonality: A Substantive Right to Collective Action in Employment Disputes*, 67 EMORY L.J. 157 (2017).

Stephens argues workers' substantive rights are in jeopardy when employers shield themselves from liability by prohibiting collective action in individual arbitrations. The Courts, siding with the employers, refuse to recognize these workers' rights. This threat to workers' rights stems from courts' misperceived tension between the NLRA and FAA. He suggests that courts can harmonize the statutes by adopting the effective vindication exception to invalidate individual arbitration agreements that prohibit employees from utilizing collective actions.

{44} ARBITRATION — GENERAL
{93} SUBJ MATTER: LABOR — GENERAL
{147} POWER IMBALANCE

S.I. Strong, *Rationality Revisited: A Response to Professor Greenberg*, 74 WASH. & LEE L. REV. ONLINE 184 (2017).

This article responds to a review of an empirical study of the use and perception of international commercial mediation. Specifically, by addressing the criticism of the study, the author distinguishes the law, practice, and study of international commercial mediation from national mediation – the purpose of which is to better explain the results of the study.

{21} MEDIATION — GENERAL

{75} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INT'L
{125} COMPARISONS: HISTORICAL

Daniel Spencer, *Can't We All Get What We Want?: The Use of Tiered Dispute Resolution as a Means of Sustaining Free Market Channel-Sharing Arrangements Resulting from the FCC's 2016 Incentive Auction*, 18 CARDOZO J. CONFLICT RESOL. 931 (2017).

This article discusses the use of tiered dispute resolution to effectively allocate, via channel sharing, the limited resources the electromagnetic spectrum offers. The electromagnetic spectrum is the radio frequency spectrum, which is responsible for the transmission of radio and television services as well as wireless broadband services.

{60} ADR — GENERAL
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY
{136} ECONOMIC ADVANTAGES OF ADR

Matthew J. Stanford, *Odd Man Out: A Comparative Critique of the Federal Arbitration Act's Article III Shortcomings*, 105 CAL. L. REV. 929 (2017).

This article discusses the U.S. Supreme Court's broad interpretation of the Federal Arbitration Act (FAA). Specifically, it focuses on the Supreme Court's decisions under the FAA that broadly delegate adjudicative power to non-Article III entities, such as administrative agencies and bankruptcy courts. The article then draws attention to the Supreme Court's inconsistent decision-making by discussing its hostility toward congressional delegation of adjudicative power to non-Article III entities.

{45} ARB: MANDATORY, COURT-ANNEXED — GENERAL
{104} SUBJ MATTER: REGULATORY
{149} QUALITY CONTROL

Thomas J. Stipanowich, *The Pound Conferences Living the Dream of ADR: Reflections on Four Decades of the Quiet Revolution in Dispute Resolution*, 18 CARDOZO J. CONFLICT RESOL. 513 (2017).

This piece discusses the changes made in the dispute resolution field over the past 40 years. The article analyzes how the field has advanced in the United States, how the role of attorneys has affected the practice, and problems that still exist. The author recognizes that the field has not become perfect over 40 years but poses potential issues dispute resolution practitioners and advocates should grapple with to advance the field further.

{60} ADR — GENERAL
{73} SUBJ MATTER: GENERAL
{125} COMPARISONS: HISTORICAL

Thomas J. Stipanowich & Véronique Fraser, *The International Task Force on Mixed Mode Dispute Resolution: Exploring the Interplay Between Mediation, Evaluation and Arbitration in Commercial Cases*, 40 FORDHAM INT'L L.J. 839 (2017).

The authors call for international practice guidelines for commercial dispute resolution. Given the realities of cultural differences in practice of settlement-oriented intervention strategies, the authors first provide the context that gives rise to "mixed mode scenarios" between various forms and combinations of alternative dispute resolution. They then discuss the development of guidelines and other materials to help yield more informed and effective international practices.

{60} ADR — GENERAL
{75} SUBJ MATTER: COMMERCIAL
{124} COMPARISONS: CROSS-CULTURAL

Katherine V.W. Stone, *Justice Scalia and the Demise of the Employment Class Action*, 21 EMP. RTS. & EMP. POL'Y J. 75 (2017).

This article analyzes the late Justice Scalia's contribution to employment and labor law. Specifically, the article addresses Justice

Scalia's views on mandatory arbitration clauses and the use of class action lawsuits, upholding the enforceability of class action waivers in cases such as *AT&T Mobility LLC v. Concepcion* and *American Express Co. v. Italian Colors Restaurant.*

{45} ARB: MANDATORY, COURT ANNEXED — GENERAL
{93} SUBJ MATTER: LABOR — GENERAL
{125} COMPARISONS: HISTORICAL

Elizabeth Storey, National Labor Relations Board v. Murphy Oil USA Inc.: *A Test of Might,* 13 DUKE J. CONST. LAW & PP SIDEBAR 15 (2017).

This article looks at *Nation Labor Relations Board v. Murphy Oil USA Inc.*, which presents a conflict between the National Labor Relations Act (NLRA) and Federal Arbitration Act (FAA). The issue presented is that failure to allow a collective action conflicts with the NLRA and the refusal to enforce an arbitration provision conflicts with the FAA. The article argues that ruling against employee interests poses more harm than failing to maintain the business' interest in arbitration rights.

{44} ARBITRATION — GENERAL
{75} SUBJ MATTER: COMMERCIAL
{95} SUBJ MATTER: LABOR — MANAGEMENT (UNION)
{147} POWER IMBALANCE

Eric Strum, *Hollywood Accounting: Profit Participation and the Use of Mediation as a Mode of Resolving These Disputes*, 18 CARDOZO J. CONFLICT RESOL. 457 (2017).

By examining the history of profit participation agreements in the legal realm, this note proposes that the entertainment industry use mediation to resolve disputes regarding profit participation. The author points out the weaknesses of arbitration and litigation profit participation claims, and provides a proposed model on how to handle such claims.

{21} MEDIATION — GENERAL
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT
{136} ECONOMIC ADVANTAGES OF ADR

Jared S. Sunshine, *The Secrets of Corporate Courtship and Marriage: Evaluating Common Interest Privilege When Companies Combine in Mergers*, 69 S.C. L. REV. 301 (2017).

This article discusses how important the process of negotiation is to a corporate merger or acquisition. These negotiations often are unproductive because each side is trying to gain the greatest advantage for their shareholders. Lawyers must be careful to guard their comments during these deal negotiations.

{1} NEGOTIATION — GENERAL
{81} SUBJ MATTER: CORPORATE
{134} DISPUTE PREVENTION
{151} ROLE OF LAWYERS

Matthew W. Swinehart, *Reliability of Expert Evidence in International Disputes*, 38 MICH. J. INT'L. L. 287 (2017).

Using historical trends from the nineteenth and early twentieth centuries, this article discusses the use of expert testimony in international dispute resolution. The author finds that most international disputes are resolved using ADR methods and concludes with a proposal for a checklist of questions to analyze the reliability of expert evidence.

{60} ADR — GENERAL
{92} SUBJ MATTER: INT'L
{125} COMPARISONS: HISTORICAL
{149} QUALITY CONTROL

Imre S. Szalai, Note, *The Consent Amendment: Restoring Meaningful Consent and Respect for Human Dignity in America's Civil Justice System*, 23 VA. J. SOC. POL'Y & L. 196 (2017).

This article criticizes current enforcement of arbitration agreements without meaningful consent by the parties being bound to them. The author proposes a "Consent Amendment" to the Federal Arbitration Act to encourage businesses to provide more transparent arbitration clauses and procedures in order to restore confidence in the legal system.

{45} ARBITRATION — GENERAL
{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)
{138} ETHICS: GENERAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Cherie O'Neal Taylor, *Beyond Retaliation*, 38 NW J. INT'L L. & BUS. 55 (2017).

This article takes a look at the compliance problem, specifically the problem of retaliation, in the World Trade Organization's (WTO) dispute settlement system. The article reveals that losing parties have manipulated the rules and the system to avoid compliance for long periods of time or permanently, the understanding of the dispute settlement itself has gaps and flaws, which allow for such manipulation, the dispute settlement body is limited in its ability to report and counteract compliance problems, and finally, that retaliation has its limits. The article concludes with possible solutions to help improve the WTO's dispute settlement system.

{60} ADR– GENERAL
{92} SUBJ MATTER: INT'L
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD
{146} ORGANIZATION POLICIES & RULES

Caitlin Toto, *Sharing Economy Inequality: How the Adoption of Class Action Waivers in the Sharing Economy Presents a Threat to Racial Discrimination Claims*, 58 B.C. L. REV. 1355 (2017).

The sharing economy, which includes companies like Uber and Airbnb, is exploding across the United States and the world. However,

many of these sharing economy contracts of adhesion include arbitration class action waivers. This article argues that racial discrimination claims will get lost in these individual arbitration agreements. Without congressional action or regulation, these waivers pose a threat to civil rights.

{44} ARBITRATION — GENERAL
{76} SUBJ MATTER: CIVIL RIGHTS
{79} SUBJ MATTER: CONSUMER
{144} LEGISLATION
{149} QUALITY CONTROL

Caitlin Toto, *Third Circuit Confirms the Class Arbitration "Clear and Unmistakable" Standard in* Chesapeake Appalachia, LLC v. Scout Petroleum, LLC, *Dealing a Blow to Consumers and Employees*, 58 B.C. L. REV. E. SUPP. 163 (2017).

A major issue in arbitration is whether class action is available in an arbitration proceeding. However, it is unclear who decides whether class action is available: the court or the arbitrator. This issue has not been before the U.S. Supreme Court but the recent Third Circuit decision *Chesapeake Appalachia, LLC v. Scout Petroleum, LLC*, directly answers the question. This article examines the case, its outcome, and the impact it could have on arbitration jurisprudence.

{44} ARBITRATION — GENERAL
{81} SUBJ MATTER: CORPORATIONS
{93} SUBJ MATTER: LABOR—GENERAL
{147} POWER IMBALANCE

Lara Traum & Brian Farkas, *The History and Legacy of the Pound Conferences*, 18 CARDOZO J. CONFLICT RESOL. 677 (2017).

This keynote addresses the history of the Pound Conferences, global meetings where legal minds discussed how justice could be better accessed around the world. The four Pound Conferences are discussed individually, highlighting issues and hopes discussed at each. This keynote concludes by stating that many of the same questions and

problems discussed at previous conferences still exist, but the need for ADR professionals to answer them is essential.

{60} ADR — GENERAL
{73} SUBJ MATTER: GENERAL
{125} COMPARISONS: HISTORICAL

Cara Van Dorn, *When Joining Means Enforcing: Giving Consumer Protection Agencies the Authority to Ban the Use of Class Action Waivers*, 17 WAKE FOREST J. BUS. & INTELL. PROP. L. 245 (2017).

This article explores how pre-dispute arbitration has commonly been used to prevent particularly effective class action litigation under the Employment Retirement Income Security Act of 1974 (ERISA) and the Department of Labor's Fiduciary Rule. Van Dorn argues that the Supreme Court's approach to class action waivers is antiquated and must change; allowing consumer protection agencies to regulate arbitration agreements is the only way such agencies can ever fulfill statutory objectives.

{45} ARB: MANDATORY, COURT-ANNEXED — GENERAL
{104} SUBJ MATTER: REGULATORY
{149} QUALITY CONTROL

Victoria Vlahoyiannis, *The Reality of International Commercial Arbitration in California*, 68 HASTINGS L.J. 909 (2017).

This article focuses on the state of California's anti-arbitration approach to consumerism. The article begins by looking at the history of the Federal Arbitration Act (FAA) and U.S. Supreme Court decisions that have strengthened the FAA's power. This federal approach is then compared to California's anti-arbitration approach. Finally, the article looks at "arbitration-friendly" New York to consider possible changes to California law to make it more amenable to arbitration.

{45} ARB: MANDATORY, COURT-ANNEXED — GENERAL
{79} SUBJ MATTER: CONSUMER

{136} ECONOMIC ADVANTAGES OF ADR

Ryan Vines, *Developing Improved Tactics for Advance Pricing Agreements to Decrease Negotiation Lead Time*, 19 CARDOZO J. CONFLICT RESOL. 191 (2017)

This article discusses the inefficiencies of the existing Advance Pricing Agreement (APA) negotiation process that exists between the IRS and multi-national corporations. Multi-national corporations prefer not to have to pay taxes in multiple jurisdictions, so negotiating APAs with the IRS is extremely beneficial. The article also proposes different ways in which the APA process could be improved.

{1} NEGOTIATION — GENERAL
{81} SUBJ MATTER: CORPORATE
{108} SUBJ MATTER: TAX
{146} ORGANIZATION POLICIES & RULES

Alice Wade, *The Waning of the Indian Child Welfare Act: How Mediation May Help Save the Act and Preserve Its Original Intent*, 18 CARDOZO J. CONFLICT RESOL. 829 (2017).

This note focuses on major crises that stem from the Indian Child Welfare Act. This note argues for mandatory mediation to resolve conflicts that arise between parents of Native American children not domiciled on the reservation, tribal members, and tribes. The Note explains effective mediation forums, legislative history, and potential downsides of implementing mediation.

{21} MEDIATION — GENERAL
{77} SUBJ MATTER: COMMUNITY
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{127} REQUIREMENTS: MANDATE TO USE

Jingfan Wang, *Trans-Pacific Partnership and Domestic Environmental Protection: Seeking an Alternative Standard of Review in Investor-State Dispute Settlement*, 8 GEO. WASH. J. ENERGY & ENVTL. L. 163 (2017).

This article introduces the general environmental impact of free trade agreements and studies the *Bilcon* case to illustrate a scenario where an investor-state dispute system (ISDS) in a free trade agreement would threaten a national government's environmental protection measures. This article also discusses some of the criticisms against ISDS and relevant responses. The *Bilcon* case illustrates how an arbitration tribunal could abuse the ISDS provisions and the serious resulting policy implications.

{44} ARBITRATION — GENERAL
{84} SUBJ MATTER: ENVIRONMENT
{92} SUBJ MATTER: INT'L
{149} QUALITY CONTROL

Alexis Warner, *Collaborative Divorce as an Alternative to Traditional Adversarial Divorce or Other Forms of Alternative Dispute Resolution*, 2017 DRAKE L. REV. DISCOURSE 101 (2017).

This article analyses collaborative divorce as a much more beneficial practice than traditional adversarial divorce. The note explores the reasons why collaborative divorce should be the favored approach, and also explores why it has not been more successful as an alternative method. Finally, the author explains potential methods for encouraging couples to utilize collaborative divorce as a beneficial alternative to traditional adversarial divorce.

{53} COLLABORATIVE LAW — GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{136} ECONOMIC ADVANTAGES OF ADR

Dominick P. Weinkam, *Empowering the Agency Attorney: Presenting the Case for an Incremental Improvement in the Dispute Resolution Process*, 46 PUB. CONT. L.J. 643 (2017).

This article addresses how the intended benefits of the Contracts Disputes Act of 1978 are being thwarted as a result of assigning settlement authority to contracting officers, whose skillset would be better utilized in other capacities. In his analysis, Weinkam proposes a

regulation that would provide agency attorneys with full settlement authority, offer more efficiency, and enable contracting officers to maximize their skillset in the administration of contracts.

{53} COLLABORATIVE LAW — GENERAL
{88} SUBJ MATTER: GOV'T CONTRACTS
{104} SUBJ MATTER: REGULATORY
{121} SETTLEMENT: AUTHORITY

Nancy Welsh, *Do You Believe in Magic?: Self-Determination and Procedural Justice Meet Inequality in Court-Connected Mediation*, 70 SMU L. REV. 721 (2017).

This article proposes the following reforms to enhance the likelihood that mediation will provide all parties with voice, trustworthy consideration, and real, substantive self-determination: increasing the inclusivity of the pool of mediators, training all mediators to address implicit bias, training mediators to engage in pre-mediation caucusing to develop trust, institutionalizing systems for feedback, training mediators to model listening, and adopting online technology.

{21} MEDIATION — GENERAL
{73} SUBJ MATTER: GENERAL
{138} ETHICS: GENERAL
{149} QUALITY CONTROL

Alan M. White, *Foreclosure Diversion and Mediation in the States*, 33 GA. ST. U. L. REV. 411 (2017).

White provides the benefits of mediation in yielding better outcomes in foreclosure and removing roadblocks to mutually beneficial solutions. He suggests mediations in the foreclosure process will promote housing tenure stability, ameliorate investor losses, and reduce harms to families and communities associated with foreclosure auctions and sales. He makes the case that mediation should be a permanent feature of state foreclosure laws and suggests the Uniform Home Foreclosure Procedures Act provides a useful legislative framework.

{21} MEDIATION — GENERAL
{74.5} SUBJ MATTER: BANKRUPTCY
{75} SUBJ MATTER: COMMERCIAL
{144} LEGISLATION

Hannah J. Wiseman, *Negotiated Rulemaking and New Risks: A Rail Safety Case Study,* 7 WAKE FOREST J. L. & POL'Y 207 (2017).

This article examines a regulatory technique called negotiated rulemaking, and applies it to a case study on the rail transportation of oil and other natural resources. The author uses the case study to suggest that negotiated rulemaking processes can be generally beneficial to agencies trying to address new and changing risks, and how agencies can avoid the negative aspects of the negotiated rulemaking process.

{1} NEGOTIATION — GENERAL
{104} SUBJ MATTER: REGULATORY
{125} COMPARISONS: HISTORICAL

Peter Yu, *The Investment-Related Aspects of Intellectual Property Rights*, 66 AM. U. L. REV. 829 (2017).

This article looks at how the investor-state dispute settlement (ISDS) system created by trade agreements like the North American Free Trade Agreement (NAFTA) look to be modified substantially by the Trans-Pacific Partnership (TPP). The article analyzes the strengths and weakness that ISDS arbitration has for investors, the countries of origin for those investors, and the disputant country by looking at the mechanical workings of the ISDS. The article then looks at how the proposed modifications of the TPP affect the ISDS and whether countries should adopt them. The article also addresses potential improvements to the ISDS other than the modifications within the TPP.

{44} ARBITRATION — GENERAL
{92} SUBJ MATTER: INT'L

{106} SUBJ MATTER: SECURITIES
{136} ECONOMIC ADVANTAGES OF ADR

Adam S. Zimmerman, *Civil Litigation Ethics at a Time of Vanishing Trial: The Bellwether Settlement*, 85 FORDHAM L. REV. 2275 (2017).

This article discusses an interesting and mysterious negotiation technique known as bellwether settlement or bellwether mediation. In a bellwether mediation, the parties rely on a representative sample of settlement outcomes overseen by judges and court-appointed mediators. Bellwether mediations provide the negotiating party and other actors building blocks to forge a comprehensive outcome. Zimmerman argues that courts can play a vital "information-forcing" role in bellwether settlement practice by helping to set ground rules, open lines of communication, and influence reasoned trade-offs.

{21} MEDIATION — GENERAL
{73} SUBJ MATTER: GENERAL
{128} REQUIREMENTS: STATUTORY OR RULES
{149} QUALITY CONTROL